UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO
(THE SELINSKY FORCE, LLC)

and Case 7-CB-105510

GASPARE PIRRONE, AN INDIVIDUAL

Rana S. Roumayah, ESQ.,
for the General Counsel
Barbara Harvey, ESQ., of Detroit, Michigan
for the Charging Party
Mary Ellen Gurewitz, ESQ., and
Mami Kato, ESQ., of Detroit, Michigan
for the Respondent Union

DECISION

STATEMENT OF THE CASE

Eric M. Fine, Administrative Law Judge. This case was tried in Detroit, Michigan on January 12 and 13, 2016. The charge and amended charge were filed on May 20 and December 18, 2013, respectively, by Gaspare Pirrone and then his counsel against Local 324, International Union of Operation Engineers (IUOE), AFL-CIO (Local 324, the Respondent, or the Union).[1] The complaint is combined with a compliance specification pertaining to Pirrone. The complaint alleges that on April 25, Local 324 requested that The Selinsky Force, LLC, (Selinsky or the Employer) layoff Pirrone because Pirrone was not a member of Local 324 and because of his traveler status; and that by this conduct Local 324 attempted to cause and caused the Employer to discriminate against Pirrone in violation of Section 8(a)(3) of the Act and therefore Local 324 violated Section 8(b)(2) of the Act. The complaint also alleges Local 324: on May 15 threatened employees in reference to Pirrone with internal union charges, discipline, and/or fines because he worked in Local 324's jurisdiction but was not a member of Local 324 and was in traveler status; on May 15 levied internal union charges against Pirrone; on June 19, held an internal hearing based on the referenced internal union charges; on June 19, imposed a fine of $10,000 against Pirrone; and that on June 18, Pirrone resigned from his job with Selinsky because of the internal union charges filed against him on May 15, and that by this conduct Local 324 caused Pirrone's termination of employment. It is alleged that Local 324 engaged in this conduct because Pirrone was not a member of Local 324 and/or because of his traveler status; and because he had filed an unfair labor practice charge against Local 324, and that by the described conduct Local 324 violated Section 8(b)(1)(A) of the Act.

[1] All dates are 2013 unless otherwise specified.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Local 324, I make the following:[2]

FINDINGS OF FACT

I. Jurisdiction

The Selinsky Force, LLC, a corporation with an office and place of business in North Canton, Ohio, has been engaged as a contractor in the construction industry doing industrial construction, including construction and expansion at the Gerdau Long Steel North America plant in Monroe, Michigan (the Monroe worksite). During the calendar year ending December 31, 2013, the Employer, in conducting the described business operations, purchased and received at its Monroe worksite goods valued in excess of $50,000, directly from points located outside the state of Michigan. Local 324 admits and I find the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 324 is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At the outset of the hearing, Local 324 admitted paragraph 7 of the complaint that on or about April 22, Local 324 advised Selinsky that Pirrone had not properly cleared in to work in Local 324's jurisdiction. Selinsky laid off Pirrone on April 25. Local 324 also admitted to the accuracy of the Regional Office's compliance specification. Counsel for the General Counsel also represented that the parties stipulated to an announced 800 phone number of Local 324, and that Robert Lambert served as a business agent of Local 324 from June 30, 2008 to September 30, 2012.[3]

A. The General Counsel's witnesses

Pirrone, who goes by the nickname Gomez, is a member of the International Union of Operating Engineers, Local 18 (Local 18) which is located in Ohio. He has been a crane operator and a member of Local 18 for 40 years. Pirrone lives in Michigan about 2 to 3 miles from the Ohio border. Pirrone was offered employment in January or February with Selinsky during a phone call from then Selinsky Project Manager Mike Chapman.[4] Mike Chapman told Pirrone that he was recommended by an Iron Workers business agent (BA). Mike Chapman told Pirrone the job was going to be about 4 or 5 months and Pirrone would be there until the end. Pirrone did required safety training for Selinsky on April 1. He began working for Selinsky

[2] In making the findings, I have considered the witnesses' demeanor, the content of their testimony, and the inherent probabilities of the record as a whole. In certain instances, I have credited some but not all of what a witness said. See *NLRB v. Universal Camera Corporation,* 179 F. 2d 749, 754 (C.A. 2), reversed on other grounds 340 U.S. 474 (1951). All testimony and evidence has been considered. If certain testimony or evidence is not mentioned it is because it is cumulative of the credited evidence, not credited, or not essential to the findings herein. Further discussion of the witnesses' credibility is set forth below.

[3] No party objected to the General Counsel's announced stipulations.

[4] Brian Chapman, Mike's son, is also referred to in this decision, although only Mike Chapman appeared as a witness. Both Chapman's were Selinsky officials at the time of the events herein. For clarity, at times, each Chapman will be referred to by their full name.

as a crane operator at the Gerdau Steel jobsite in Monroe, Michigan on April 2, although there was no crane on the job at that time. Pirrone began operating a crane at the site on April 8, when the crane arrived.

Pirrone testified he needed to clear in with Michigan Local 324 in order to work for Selinsky in Michigan. Pirrone testified as to how he cleared in concerning his phone contacts with Local 324, with the aide of Pirrone's cell phone records.[5] Pirrone testified he first called Local 324 to clear in on April 2. Pirrone's phone records for April 2 show he called Local 324's headquarters at 1:14 p.m. with the call lasting 3 minutes. Pirrone testified a receptionist answered the phone and he stated he needed to talk to a BA to clear in. The person placed Pirrone on hold. Then a man picked up the phone. Pirrone told then man his name, that he was working at Gerdau Steel, and Pirrone needed to clear in. The man asked what Pirrone was doing and Pirrone said he was going to be running of crane, setting a building. The man asked how long the job was going to be and Pirrone told him 3 to 4 months. Pirrone gave the man the name of the company he was working for. Pirrone told the man the crane was not at the site yet; and the man stated for Pirrone to call back when the crane arrived. Pirrone did not get the man's name, but Pirrone thought he was a BA.

Pirrone, as reflected by his phone records, next called Local 324 on April 8 at 8:03 a.m. at which time he had a 4 minute call. Pirrone testified he spoke to a receptionist and he asked to speak to a BA. Pirrone was placed on hold and then connected to a man. Pirrone did not know if it was the same man he spoke to on April 2. Pirrone did not get the man's name on April 8. The man asked Pirrone his name, who he was working for, what he was going to be doing, how long the job was going to be, and what crane Pirrone was running. Pirrone gave the man his name, stated he was working for Selinsky at the Gerdau Steel Mill project. He told the man he was going to be running a 50-ton cherry picker, and the job was good for 3 to 4 months setting steel. Pirrone told the man Pirrone was from Local 18, and he gave the man his Union number. Pirrone explained he gave the man the above information because that is how you clear in as a traveler to a different local. Pirrone testified he knew the procedure because he had cleared in with Local 324 at least once or twice a year over the past 40 years, estimating he had done it about 40 or 50 times. Pirrone testified there was never an issue before about his clearing in. Pirrone testified he cleared in with Local 324 on April 2 for Selinsky the same way he had always cleared in. Pirrone received no instructions on changes in clearing in procedures.[6]

[5] Pirrone's cell phone records were submitted into evidence for the period of April 1 to 10.

[6] Pirrone had never worked for Selinsky before. Pirrone testified that when he had previously worked in Michigan it had been for a few employers naming Henry Gurtzweiler as one. Pirrone testified he had worked for Gurtzweiler for over 20 years. He testified the other employers he had worked for in Michigan were before working for Gurtzweiler. Pirrone testified he worked for Gurtzweiler in Michigan around 30 to 40 times over the years. He stated the jobs were only a day or two at a time. Pirrone testified when he came in for a day or two the employer called in for him, but "if I didn't believe that the Employer called, I called to make sure that I was cleared in." Pirrone testified it was the responsibility of both the employer and the member to call the Union. Pirrone testified he had worked jobs in Michigan which were longer than 1 or 2 days, Pirrone testified that around 15 to 20 years ago, he worked a job at the St. Mary's Hospital around 3½ months. Pirrone also worked at Adrian College in Michigan on multiple jobs where he was there 3 or 4 weeks at a time. He also worked a job at the Monroe A&P where he worked around 6 to 8 weeks.

Pirrone identified Matthew Menchaca as a Local 324 member who was running the same crane as Pirrone at the Gerdau site, but for a different company. Pirrone testified, on April 8, Pirrone asked Menchaca for the wage rate on the job. Menchaca said he would call the union hall to find out. Menchaca later that day told Pirrone that Menchaca had called the hall, and was told to have Pirrone call himself because Menchaca was not a BA. Pirrone's phone records show he called the Union on April 8 at 12:12 p.m. and there was a 2 minute call. He testified no one answered at that time. Pirrone's phone records show he then called Local 324 on April 8 at 2:43 p.m. and he had a 6 minute call. Pirrone testified he asked to speak to a BA, but he did not get name of the man who came to the phone. Pirrone testified the man asked Pirrone his name, where Pirrone was working, what he was doing and how long he was going to be there. Pirrone answered the questions. Pirrone explained to the man that he was a Local 18 member calling him to find out the wage rate. Pirrone was given the wage rate during the call.[7]

Pirrone's phone records reveal he called Local 324 again on April 8 at 3:05 p.m. and he had a 5 minute call. Pirrone placed this call to determine if he had a current reciprocity form on file with Local 324. Pirrone explained a reciprocity form is filled out to have an employee's benefits and vacation pay sent back to their home local. During this call, Pirrone told the receptionist he needed to talk to someone about a reciprocity form. Pirrone was then connected to another woman whose name Pirrone later learned was Tiffany Haley. During the call, Pirrone asked Haley if he had a current reciprocity form on file and she asked his name. Haley then looked it up and when she returned to the phone she told Pirrone he had a reciprocity form on file, but it was not current. The form on file was dated July 9, 2008. Pirrone was told Haley could email him a new form to which Pirrone gave Haley his email address. Pirrone identified an email dated April 8, which he received from Haley, identified therein as an administrative assistant working in the membership department of Local 324. Haley's email attached a blank reciprocity form, and gave Pirrone instructions on how to file it with Local 324. Pirrone testified, as confirmed by the email chain, that he filled the reciprocity form out and emailed it back to Haley that night. On the reciprocity form that Pirrone emailed to Haley, he stated Local 18 was his home local, that he was working for Selinsky at the Monroe Steel Mill, with a 3 to 4 month approximate job duration. The form contained a description of the crane he ran on the job. The form is signed by Pirrone and dated April 8. Pirrone testified he did not know what to do with the line on the form designated witness, which he left blank. Pirrone called Haley on April 9 at 8:41 a.m., as reflected in his phone records showing he placed a 2 minute call. Pirrone asked Haley if she received the email and she said yes and he asked her if there was anything wrong with the form and she said no. Pirrone asked Haley what the witness line was and Haley said she would get it signed by a BA. Pirrone asked Haley if he was good to go and she said yes.

[7] Menchaca, called as a witness by the General Counsel, testified he is a crane operator, and has been a member of Local 324 for 15 years. Menchaca started working for A.A. Boos at Gerdau Steel jobsite in February 2013. Menchaca confirmed that when Pirrone started at the site, Pirrone asked Menchaca about the rate of pay under the steel agreement, and Menchaca called Local 324 to find out Pirrone's rate. Menchaca testified when he called the Union the receptionist answered and Menchaca stated he needed to speak to a BA with questions about the pay scale. Menchaca testified he assumed he was then connected to a BA. Menchaca testified the man did not give his name. During the call, Menchaca told the man that Menchaca was calling for a Local 18 member who was working at his site. Menchaca did not give the man Pirrone's name. Menchaca testified the man told him to have Pirrone call the hall as Menchaca was not a BA. Menchaca told Pirrone what happened. Menchaca testified Pirrone later told Menchaca that he called the hall.

Pirrone testified he continued to work for Selinsky with no problem, until around the last week of April. Pirrone testified, at that time, he received a call on his cell phone and someone asked if this was Gomez. Pirrone said yes and the person stated this is Matt from Local 324. The record reveals it was Local 324 BA Matt Everly who placed the call. Pirrone testified Everly told him that he did not clear in right and Pirrone needed to quit working at Selinsky immediately. Pirrone testified Everly did not say he was a BA. Pirrone told Everly that Pirrone did clear in right, he could prove it, and Pirrone did not know what Everly was talking about. Pirrone testified he was referring to his phone records and what he had filled out in terms of proving he cleared in. Pirrone testified Everly responded, "We'll go from here." Pirrone testified Everly called Pirrone on his cell phone. He testified he did not recall calling Everly first. Pirrone testified that, "Brian (Chapman) told me the week of, when this was going down, that the Union had contacted him to lay me off, ..." Pirrone testified that, "He said that they were going to force them to lay me off to hire one of their guys -- because I didn't clear in." Pirrone testified he did not recall Brian Chapman telling him to call the Union.

Pirrone testified, after Everly called him, Pirrone called Doug Stockwell who was recently elected business manager of Local 324. Pirrone asked Stockwell "what the heck was going on, that the membership finally voted somebody in that was one of us, and why this crap continued to go on in this local." Stockwell said he would get back to Pirrone, but never did. Stockwell would not return Pirrone's follow up calls.

Pirrone testified, on April 25, Mike Chapman came up to Pirrone and said he had to lay him off. Mike Chapman said the Union was strong-arming him and forced them into laying Pirrone off and Selinsky did not want to deal with it. Pirrone testified Mike Chapman told him he had to hire Bob Lambert the day Pirrone left and Lambert was coming to take Pirrone's job. Pirrone testified he asked Mike Chapman if he had a problem with Pirrone filing an unfair labor practice charge because this was a bunch of bull. Mike Chapman told Pirrone to do what he had to do. Pirrone filed an unfair labor practice charge with the Region 7 against Local 324 on April 25.

Pirrone testified, after he filed the unfair labor practice charge, he was contacted by Board Agent Brett Jackson who asked if he would drop the charge in return for Local 324 giving him his job back. Pirrone testified he said fine and asked about getting paid for the week he was off. He testified Jackson said we will deal with that another time. Pirrone testified he never had any dealings with Local 324 about his backpay for the week or concerning his withdrawal of the charge. Pirrone testified the only conversation he had was with the Board agent. Pirrone testified he did not receive backpay for the week, but he went back to work anyway. Pirrone testified, "I dropped my charge to go back to work." Pirrone did not sign anything saying he would waive his backpay. Pirrone testified he did not enter into any written agreement with Local 324 or the NLRB to settle his charge. He testified they asked him to write a letter stating that he would drop his charge for being reinstated. He testified, "I wrote the letter, sent it in, and got the phone call to go back to work."

Pirrone testified when he withdrew his initial unfair labor practice charge involving his layoff from Selinsky, Local 324 did not inform him they had an intention of pursuing internal union charges against him. Pirrone testified Jackson did not inform him that if he withdrew the charge and accepted reinstatement the Union might go after him for earnings or a fine. Pirrone testified his withdrawal request was based on his understanding that the matter was entirely resolved by his reinstatement and waiver of backpay. Pirrone testified Jackson did not advise him that the Union still maintained he had not cleared in properly. Pirrone testified he did submit to Jackson the reciprocity form and emails he had with Haley, as well as Pirrone's phone

records. Pirrone testified this was in response to Jackson asking him what proof he had relating to his clearing in. Pirrone denied Jackson told him the Union said he had not cleared in. Pirrone testified he submitted the records because Jackson asked for them.

Pirrone testified that Mike Chapman called Pirrone on a Tuesday, which Pirrone estimated to be May 1.[8] Mike Chapman stated someone called him from Local 324 asking Chapman to reinstate Pirrone. Pirrone was terminated on April 25 and returned to work on May 6. Pirrone testified during the time he was laid off Lambert, a former BA for Local 324, replaced Pirrone at Selinsky. Pirrone testified he heard Lambert was laid off when Pirrone returned to work. Pirrone testified that Lambert began to work for A.A. Boos Crane at the same jobsite around June 1. Pirrone testified when Pirrone subsequently quit his job with Selinsky on June 18, Lambert was still working there for A.A. Boos Crane.

Pirrone testified that on May 8, Dan Boone and Everly, of Local 324, came to the job site. Selinsky Superintendent Brian Chapman came up to Pirrone and said the BA's want to talk to you. Pirrone asked them was going on. Boone handed Pirrone his card and said have your BA for Local 18 get a hold of them to clear this matter up. Pirrone asked what matter up in that Local 324 had given him his job back. Pirrone testified that, "Matt, the other business agent, spouted off, you didn't clear in right." Pirrone testified, "I said, whatever. And I went back to work." Pirrone further testified he stated, "You gave me my job back. Why do I -- I don't need to call anybody. You reinstated me. You gave me my job back. You called me up and said I will reinstate you, drop your charge. That's the same thing as clearing in. You cleared me back to come to work. So why would I call anybody else? And then Matt spouted off, you didn't clear in right. And they left." Pirrone testified he called Local 18 Business Manager Gary Siesel and told him that he was supposed to talk to Boone or call one of the officials at Local 324 and get this matter cleared up.

Pirrone received a letter dated May 15 from Local 324 President Scott Page, the letter stated that Page filed charges against Pirrone, "for violation of Article XV of the Constitution of the International Union of Operating Engineers". The letter went on to state:

> The charge being specifically that Brother Pirrone obtained employment at work at the craft within the territorial jurisdiction of another Local Union (Local 324) and without the consent of such other Local.
>
> Brother Pirrone failed to follow clearing in procedures outlined in Article XV, including but not limited to Section 3(a).

Pirrone testified after he received the May 15 letter, he again called Siesel and asked for help, but Siesel told Pirrone he was on his own.

Pirrone received a letter dated May 22 from Thomas Scott, recording-corresponding secretary of Local 324. The letter, copied to Page and Stockwell, stated:

> Pursuant to Article XXIV, Subdivision 7, Section (n) of the Constitution of the International Union of Operating Engineers and Article XI-Section 2 of the By-Laws of the International Union of Operating Engineers Local 324, you are hereby notified to appear at a trial regarding charges levied against you by Brother Scott Page.
>
> The trial shall be held at the regular General Membership meeting on Wednesday, June 19, 2013, at 8:00 pm at the Crowne Plaza Hotel …, Grand Rapids, MI.

[8] May 1 was a Wednesday in 2013.

Pirrone identified what he described as an email he sent to Local 324, with the date June 14, requesting that the June 19 trial be postponed until the July union meeting scheduled in Detroit to allow him more time to prepare for the hearing; and stating that he works until 5:30 p.m. and the hearing scheduled in Grand Rapids was 168 miles away. In the email, Pirrone stated that he had waited 2 weeks for a copy of Local 324's bylaws and constitution and he still had not received them. He stated that he would call the hall again that night to request them as he needed them to prepare for his case. Pirrone testified he received a response to the email, and they told him they would try and get him the constitution. He testified his request for a postponement was denied as was his request to move the hearing from Grand Rapids to Detroit. Pirrone testified he also wanted the hearing moved from Grand Rapids to Detroit because the charge was filed in the Detroit area and Pirrone could bring more people to a trial in Detroit. Pirrone testified he did not see a copy of Local 324's by-laws or the requested constitution until after the June 19 trial.

Pirrone testified he quit his employment with Selinsky on June 18 hoping that at the June 19 trial he could inform the union officials he was not working and they would settle the dispute. He testified the fine the Union was going to impose on him that caused him to quit his job. He testified Lambert had previously told him he was going to be fined and the amount of the fine.

Pirrone attended the internal union hearing on June 19 at the Grand Rapids location. Pirrone testified he arrived at the trial around 8 or 8:05 p.m., they checked his identity and then denied his admission to the room. He testified he was kept out 5 or 6 minutes. Pirrone testified when he entered the room, "Everybody was already sitting down. All the business agents were up in the front, and the executive board people or whoever they were, were in the front also." Pirrone testified it appeared that every BA in the local was there, as well as the executive board and around 60 Local 324 members. Pirrone testified he was the only person brought up on charges. Pirrone was accompanied by his brother-in-law who is a member of Local 324. Pirrone testified at the start of the hearing someone announced the charge was Pirrone did not properly clear in. Pirrone testified three tellers were appointed to count the vote.

Pirrone testified they asked him to come up and plead his case. Pirrone testified he had four folders made up of his phone records, letters including the letter from Haley, and the proof he had to show that he did clear in. Pirrone passed the folders out to the members of Local 324. Pirrone testified at the outset at the hearing, "I objected that I knew that I could not get a fair trial because I was already convicted, and I knew what you were going to fine me." He testified Lambert previously told him they were going to fine him up to $10,000. Pirrone's request to tape the hearing was denied. Pirrone testified his testimony at the internal union trial "was everything that I did to clear in and that I thought I was cleared in properly. I did everything that I've done in the past." He testified he showed them his phone records and the reciprocity form that he had discussed with Haley. Pirrone also had a letter from Menchaca stating he had called the Union to inquire about wages pertaining to Pirrone. Pirrone testified, that "After I went through my whole speech and everything, of what I did and this and that, as I was walking back, they did a standing head count." Pirrone testified the Union did not present any evidence. Pirrone testified that Page stated at the hearing that the reason he filed the charge against Pirrone was because he has to make sure his people have a job so they can feed their families and make their house payments. Pirrone testified Page received a standing ovation for the remark, stating, "Gave him a standing ovation. How do you get a fair trial?"

Pirrone testified Financial Secretary Dombrow called for the head count four times pertaining to the vote as to whether he was guilty. Pirrone explained that, "They stood up in the

front with their arms crossed, looking at their membership, and asked if you think Mr. Pirrone's guilty, please stand up. Approximately eight people stood up." Pirrone testified, "He repeated it again. I repeat, if you think Mr. Pirrone's guilty, please stand up. Another 10 or 12 people stood up. He repeated it the third time. I repeat, if Mr. Pirrone's guilty, please stand up. Most of them stood up. Then he repeated the fourth time, I repeat if Mr. Pirrone's guilty, please stand up. That's when everybody stood up except for three old-timers." Pirrone testified there was a vote of around 60 to 3 that he was guilty with a $10,000 fine imposed. Pirrone testified if it would have been only one count the vote would have been 52 in his favor with 8 against him. Pirrone testified Page imposed the fine. Pirrone testified the executive board was present, but Page did not confer with them before telling Pirrone what the fine would be.[9]

Pirrone testified the procedure for counting votes was not legal. He testified the constitution states at the trial there should be a secret ballot vote. Pirrone later testified it was his understanding the vote was to be taken by written ballots. He testified there were no ballots passed out. It was a standing vote only. Pirrone testified Article 24, Subsection 7, Section o, page 100 of the constitution provides for votes by ballot. Pirrone testified that no one from Local 324 prior to the internal union trial gave him a copy of the Local 324 by-laws, or of the international union constitution.

Pirrone received a letter from Scott, dated June 24, pertaining to the June 19 trial stating:

> Following the presentation of evidence, the members in attendance voted overwhelmingly to convict. Financial Sec. Ken Dombrow, officer elected by the Executive Bd. to preside over the proceedings, issued the following penalties pursuant to Article 24, sub-div. 7(e) of the International Constitution: a fine of $10,000.

The letter directed Pirrone to remit payment of the fine to Local 18's financial secretary. Pirrone testified that as of the time of the unfair labor practice trial he had not paid the fine.

Pirrone was issued a vacation holiday fund stub with a check date of November 29, from Local 324's Vacation and Holiday Fund of Michigan showing that funds in the amount of $2218.57 were taken out of Pirrone's check for various purposes for his work at Selinsky with work dates of April, May, and June 2013 including funds for working dues.

Mike Chapman testified he worked for Selinsky from July 2012 to February 2014 as project manager. Mike Chapman testified work began at Selinsky's Gerdau Steel site in Michigan in April 2013. Mike Chapman testified Pirrone was hired there as a crane operator based on a recommendation from a Toledo Iron Worker BA. Mike Chapman testified Selinsky is a union contractor in Ohio, and he thought Selinsky was signatory with Local 324 when Pirrone was hired for the Michigan site. However, he testified he later learned Selinsky only signed with Local 324 after the job started. Local 324 placed into evidence its short form agreement showing it was signed by a Selinsky official on May 9. Mike Chapman did not tell Pirrone that Selinsky was not signatory with Local 324 when he hired Pirrone. Mike Chapman did not call

[9] Pirrone requested a copy of Local 324's minutes of the June 18 meeting. They were provided to him by letter dated August 19. The August cover letter from Local 324, as well as the minutes of the meeting, refer to the June 19 meeting as the "Special Called Meeting." The minutes state the meeting began at 8:05 p.m. and adjourned at 8:36 p.m. The minutes state there was a vote of 56 guilty and 3 not guilty. They state, "DUE TO THE SERIOUSNESS OF THE OFFENSE, MR. PIRRONE WAS FINED TEN THOUSAND DOLLARS ($10,000.00)."

anyone at Local 324 to tell them he wanted to hire Pirrone. He testified he is familiar with the clearing in process when an employee from an outside local works in a different jurisdiction. Mike Chapman testified the member calls the BA or goes to the union hall to get cleared in to do the job. He thought it was the employee's responsibility to call not the company's.

Mike Chapman testified, after Pirrone started working, Mike Chapman had conversations about Pirrone with a Local 324 BA whose name he did not recall. He could not specify the date of his first conversation. Mike Chapman testified they discussed, in reference to Pirrone, "that he didn't clear in, and he wanted to switch him with another guy." Mike Chapman testified the BA identified the person they wanted to switch Pirrone with as Bob Lambert, stating Lambert was "a local guy." Mike Chapman testified he talked with the BA a few times, that "I remember a couple of phone calls. And then I had to lay him off." Mike Chapman testified as a result of the calls he laid off Pirrone. Mike Chapman testified in reference to Local 324 that he laid off Pirrone because "they wanted me to bring in Lambert, Bob Lambert." Mike Chapman testified he told the BA that he did not want to lay off Pirrone because he was a good operator. Mike Chapman testified the BA told him that Pirrone was not cleared in and he had to lay him off.[10] Mike Chapman testified he did what the Local 324 told him to do in that he laid off Pirrone. When asked what he told Pirrone, Chapman testified, "See, I don't know, remember if I laid him off or if Brian laid him off. Because I was a project manager. My son was a superintendent. But I remember shaking Gaspare's hand and stuff, you know, just -- so". Pirrone was laid off on April 25. Mike Chapman testified he hired Lambert as Pirrone's replacement. He testified he hired Lambert because that was who the Union sent out. Mike Chapman knew Lambert was former BA for the Union. Mike Chapman testified that, around 3 days after Pirrone's layoff, he had a conversation with a representative of Local 324 where the Union called and said put Pirrone back to work. Mike Chapman testified the call, "sort of made me smile, and I was so happy, you know."

Menchaca, a crane operator and a member of Local 324 for 15 years, testified he has worked out of Local 324's jurisdiction around four times in his career, and he knew the procedure for a traveler clearing in. Menchaca testified generally the company you are working for will call the union and inform them the traveler was going to be there. However, Menchaca testified it was his responsibility to call the union because there is specific paperwork he had to sign. Menchaca testified you call the local union hall to clear in and you ask to speak to a BA, as any BA can help you. Menchaca testified that he cleared in at a Ft. Wayne local about 4 months prior to his testimony, that he called the local there, told them his name, where he was coming from, who he was working for and where he was going to be working. In terms of paperwork, Menchaca testified you have to sign a reciprocity agreement so your money will come back to your home local in terms of health care and pension money. Menchaca testified he would get that form from a BA. Menchaca testified they bring it out to you, but it is different all the time. Menchaca testified when he cleared in at Ohio with Local 18 he went to the union hall and did the paperwork without anyone coming to see him. Menchaca testified sometimes they come out to the job site with the paperwork the day you start, but at a Chattanooga job where he worked it took them 3 or 4 days to come out with the paperwork.

Chris Lafaso, a crane operator, has been a member of Local 18 for 27 years. He testified that, during that time, he has worked at job sites in Michigan within the jurisdiction of

[10] Mike Chapman testified that, prior to talking to the Local 324 BA; he also spoke to Lambert while Pirrone was working. He testified Lambert called Chapman two or three times about getting a job with Selinsky. Mike Chapmen told Lambert that he would hire him when they needed a second crane operator.

Local 324. Lafaso testified he has done so 20 times a year over the past 25 years. Lafaso testified when he works in Michigan he has to call Local 324 dispatch and tell them he is coming to work. Lafaso testified dispatch usually asks him his name, where he is going to work, the duration of the job, his local union, and the type of crane he is running. Lafaso testified this process is known as clearing in. Lafaso testified he knows the process because it is what he has done for the last 27 years, and it has not changed. Lafaso testified he works for the same company all the time as he is a permanent employee of Jeffers Crane. He testified that often the jobs they come in for in Michigan are very short-term meaning a week to a month which Lafaso does. Lafaso testified for longer jobs Jeffers usually hires people from Local 324. Lafaso testified when he comes in for the shorter jobs he calls the Local 324 dispatcher.

Lafaso testified he does not have to fill in any paperwork to be cleared in when he calls to clear in. Lafaso testified sometimes a BA will show up on a job with a reciprocity form for him to fill out which is used to get his benefits transferred to Local 18. Lafaso testified he does not have to fill in such a form every time he clears in as he assumes that Local 324 has one on file and the BAs do not show up at the job site every time he clears in. Lafaso testified the employer he is working for generally calls Local 324 to notify them Lafaso will be working at the job site. Lafaso testified he also always calls in himself.

Lafaso testified he worked as a traveler at the Saginaw Windmill Farm jobsite in Michigan and Jeffers Crane was his employer. Lafaso testified he cleared in by calling Local 324's main office and talking to dispatch. Lafaso testified he gave them his name, the duration of the job, its location, and his local Union number. Lafaso testified this was in the spring of 2013. Lafaso testified Local 324 BA Sam Houston showed up the day he started work and asked Lafaso why he did not call him to clear in. Lafaso told Houston that Lafaso had called the office dispatch and told them he was coming, and they gave Lafaso the okay. Lafaso testified he usually never calls the BA when Lafaso shows up to a job. Rather, Lafaso calls Local 324's dispatcher. Lafaso testified Houston apparently called in and found out Lafaso had cleared in. Lafaso testified Houston then had Lafaso fill out some paperwork. Lafaso testified Houston told Lafaso to call him in the future.

B. Respondent's witnesses

1. Local 324's operations

Respondent called multiple witnesses to testify and they are: Scott Page, Local 324's president and business representative. Page has been a member of the local for about 33 years. Page has served different stints as president, the last beginning at the end of 2012 to the present. Daniel Boone has been employed by Local 324 as a BA for 28 years, and has been a member of the operating engineers for 48 years. Boone is a vice president of Local 324. Boone testified he supervises other BA's. Matthew Everly has worked for Local 324 since December 10, 2010. Everly started out as a dispatcher and then moved into the field as a BA in January or February 2013. Tiffany Haley is employed by Local 324 as an administrative assistant in the membership department and she also assists in the pipeline division. Respondent also called Amy Bachelder who is employed by Respondent's law firm as a part-time attorney. Bachelder had worked for the NLRB from October 1976 until retiring in 2002. Bachelder was a deputy regional attorney at the time of her retirement.

Page testified the denial of consent for a traveler to clear in can occur when Local 324 has members who are available and capable of performing the work for which the traveler is requesting clearance. Page testified a traveler who wants to work in Local 324's Michigan

jurisdiction, based on the international constitution, is required to call and clear in. Page testified clearing in at Local 324 always involves the dispatcher who maintains the out of work list. Page testified the out of work list changes on a daily basis when people go to work or when people call to be placed on the list. Page testified the dispatcher is also a BA, but a BA is not also a dispatcher as there is only one dispatcher. Page testified if the dispatcher is not available a BA would fill in for the dispatcher because the position is a crucial part of Local 324's organization. Page testified the dispatcher is at the union hall from 7:30 a.m. to 4:30 p.m. with a brief break for lunch. Page testified when the dispatcher takes a break or goes to lunch a BA would not fill in for him. Rather, a call would go to the dispatcher's voice mail. Page testified typically a BA, aside from the dispatcher, does not work in the union hall. He testified occasionally there is a BA there for ministerial work, but on a daily basis no BA is assigned to the office other than the dispatcher. Page testified that, in addition to maintaining the out of work list, the dispatcher keeps notes as to who calls in and what they called about. Page testified the dispatcher dispatches members out to work and BA's to job sites to address concerns of members.

Page testified any calls coming into Local 324 would go to the receptionist. Page testified if a traveler calls and says they want to clear in the receptionist would direct the call to the dispatcher. He testified when someone calls stating they want to clear in the caller would assume the receptionist is directing them to the right person. Page testified there is nothing in writing in Local 324's rules telling a traveler the dispatcher is the person to talk to clear in. When asked if calling the Union and asking to clear in was all a traveler could do, Page testified, "I would agree that that is -- following the initial steps of the procedure if that is what took place." Page testified when the dispatcher receives a call from a traveler about clearing in, the dispatcher will ask questions as to the job, its length, and the contractor for which the individual is going to work. Page testified the dispatcher asks the latter question because Local 324 is obligated to collect fringe benefits for the employee and in order to collect those benefits Local 324 has to have a contract with the contractor. Page testified the dispatcher checks to see if the contractor is signatory with Local 324 and whether Local 324 members are available who could do the work. Page testified when someone is cleared in they are cleared in to operate that piece of equipment on that job site typically as long as that piece of equipment is on the site.[11]

Page testified there are a lot of contractors that go in and out of Local 324's jurisdiction to perform work in Michigan. Page testified, as an example, Jeffers Crane comes into Local 324's jurisdiction regularly for short-term jobs. Page testified short term jobs are handled differently than jobs of longer duration because these contractors cross state lines all the time so clearances for short term travelers are granted more readily than somebody coming in for a long term job. However, Page testified the employees of a contractor that come regularly for short term jobs do clear in and "they typically call and talk to the dispatcher." Page testified, "the dispatcher is always involved because of the out of work list and the maintenance of it."

Page testified the dispatcher works in conjunction with a BA for traveler clearance for longer term jobs within Local 324's jurisdiction. Page testified typically the dispatcher takes the information of somebody requesting to clear in and contacts the BA and will ask the BA if he knows of any members who were out of work in his area because with a non-exclusive referral

[11] Similarly, Everly testified the dispatcher works at the union hall as the in-house BA and travelers call the dispatcher to clear in. Everly testified when somebody calls to clear in they give the dispatcher their name, registration number, their home local, the company they want to work for, the project, the location, and the duration of the job. Everly testified the dispatcher gets the name of the company to see if they have an agreement with the Local 324.

system the Union is not obligated to dispatch based on the out of work list. Page testified, **"**We try to as much as possible. There are members that don't get on the out-of-work list for whatever reason." Page testified when a traveler clears in usually a BA goes to the site to check the traveler's membership card to ensure he is a member in good standing and then he would ask him to execute the reciprocity form. Page testified fringe benefits are paid to the local where the work is performed and then reciprocated to the individual's home local. Page testified Local 324 keeps a portion of the vacation/holiday fund which is called the working dues and therefore Local 324 gets some dues money for the traveler working in their jurisdiction.

Everly testified if someone called the hall and said they needed to clear in they would be referred by the receptionist to the dispatcher, which in April and May 2013 was Steve Saunders. Everly, who testified in January 2016, stated Saunders no longer worked for the Union in that, "He was laid off earlier this year." Everly did not know the reason for the layoff.[12] Everly testified if the dispatcher did not give the person calling to clear in an answer on the spot then the dispatcher should get back to them. Everly testified when someone calls to clear in the dispatcher, in addition to checking whether the employer was a signatory employer, would call the traveler's home local to make sure they are a member in good standing. Everly testified then the dispatcher would look to see if he had anyone available for the position sought by the traveler in Local 324's jurisdiction before determining whether to clear a traveler in. Everly testified Local 324 has an out of work list. Everly testified if someone is out of work that has experience on the piece of equipment the dispatcher would refuse to clear the traveler in. Everly testified Local 324 bars travelers from working if there are qualified Local 324 members on the out of work list. Everly testified the dispatcher, on his computer, can look up contracts to check the signatory status of a contractor, and can also see who is on the out of work list.

Everly testified the dispatcher can give an answer on clearing in on the spot in certain circumstances, such as an assignment of a couple of days. Everly testified there are other circumstances that warrant clearing in on the spot. Such as if someone is going to operate a piece of specialty equipment, or if they provide a certain craft to that company to where "we don't -- either steady operators, steady person for that company, that they would get let in or the dispatcher would just tell them, yeah. I mean, we don't send them guys to run truck cranes."

Everly testified if a traveler is coming in for a job 2 weeks or more Local 324 gets a reciprocity form. He testified, if it is under 2 weeks, Local 324 does not require the reciprocity form. When asked if Local 324 would prevent a traveler from working 2 or 3 days even if they had someone on the out of work list, Everly testified, "Well, it kind of depends on what they're running and what they're coming in to do." Everly then provided examples in his testimony. When asked if the traveler was a crane operator calling in for a 2 day job and the Union had a crane operator on the out of work list as to whether the Union would bar the traveler Everly testified, "It depends what they're doing,…". He testified if they are bringing in the crane and the yard is an hour away, "How -- you know, we would have to know that we could find someone who would drive all the way to their yard, maybe possibly get drug tested or go through an orientation, and then take the crane back down to the yard when they're done. So sometimes it doesn't make sense." Everly testified if a crane operator called in for a month job and they had a qualified crane operator on the list, "We would turn down their request to clear in." He testified the Union would inform the traveler, "We're not going to give you clearance right now."

[12] Boone testified he thought Saunders was laid off 4 to 5 months prior to the unfair labor practice trial. Boone testified Saunders was not working as the dispatcher at the time he was laid off. Boone also did not know the reason for the layoff.

Everly testified a reciprocity form can be mailed out to the traveler, but usually the BA would take it to the person trying to gain clearance, or who has been cleared in. Everly testified, at the time of the incident with Pirrone, a lot of reciprocity forms were being sent out because the national pipeline agreement provides if pipeline work comes to Michigan then 50 percent of the work could be done by non-Local 324 members. He testified typically it does not work like that in that Everly keeps reciprocity forms in his car, so if the dispatcher clears someone in, Everly takes the form to the jobsite, the traveler fills it out, and Everly turns it in.

Everly testified in response to a suggestion from Respondent's counsel that in 2013 Local 324 did not have an exclusive hiring hall, and that not everyone in Local 324 who was available to work would be on the out of work list. Everly testified it was a pooling of information between the BA in the field and the dispatcher to determine who was out of work, which might preclude a traveler from clearing in.

Boone testified the dispatcher keeps the out of work list. Boone testified a member has to call the Local to get on the out-of-work list. Then the following exchange occurred.

> Q. In 2013 it was a nonexclusive hiring hall?
> A. Yes.
> Q. And would business agents also know -- have any information about who's looking for work?
> A. No. He may -- an agent that's out in the field has guys that he knows and, you know, they'll call him, hey, I'm out of work, I'm on the list if something comes up that, you know, that I can run -- that's specific to his qualifications. You would know that.
> Q. So what that -- nonexclusive hall -- do members get their own work or -- is that how it works?
> A. Either/or, and I mean he can solicit his own work, or he can get on the out-of-work list and a company may call.
> Q. Once a person's name is on the out-of-work list, does it stay on the list until they get employed?
> A. He has to call in every 15 days to keep current on the list, or when he gets sent to work, you know, he calls and tells me take me off the list, I'm going -- I went to work for so-and-so.

Thus, unlike Everly, Boone did not take the bait suggested by Respondent's counsel that dispatcher will confer with a BA concerning unemployed members who were not on the out of work list before clearing in a traveler.

Boone testified the procedure is for a traveler to call the dispatcher to clear in. Boone testified if someone called Local 324's 800 number they would speak to the receptionist, who if told the caller wanted to clear in would refer the call to the dispatcher. Boone testified if the dispatcher is not in the hall, and a BA happened to be there, the BA would take the information and give it to the dispatcher who would go to the out of work list. Boone testified it would be sufficient if it got to the dispatcher and he looked at the list. Boone testified if a call is referred to a BA, in the dispatcher's absence at the hall, it is the BA's job to let the dispatcher know the traveler called. Boone testified the dispatcher keeps records of who has called to clear in. Respondent's counsel then represented, "We looked for those records, Your Honor, but we did not find them." Respondent's counsel stated the Union's records go back to the middle of May 2013. It was stated Respondent did not have records for April.

2. The events surrounding Pirrone

Haley testified her duties include processing reciprocity forms for non-Local 324 members known as travelers. When Haley receives the forms she records its receipt, and puts the member into the system. Haley testified the reciprocity form is used to reciprocate fringe benefits Local 324 receives to the traveler's home local and it authorizes Local 324 to deduct dues from the member's vacation and holiday fund. Haley testified the moneys for the funds are paid to Local 324 while the traveler is working in Local 324's jurisdiction, and then fringes are transferred to the home local as required. Haley testified the funds for the vacation fund stay with Local 324 and do not transfer to the home local. Haley testified dues are deducted from the vacation fund. Haley testified travelers file a reciprocity form every time they come to work in Michigan. Haley testified there is a "pipeline agreement" with the International Union. Haley testified that under the pipeline agreement 50% of an employer's workers can be travelers brought in by the contractor. Haley testified that in 2013 she was receiving hundreds of reciprocity forms from the pipeline workers.

Haley she received a call from Pirrone in April 2013. She testified Pirrone asked her to send him a reciprocity form and she did so. Haley testified she had only two calls with Pirrone, and following the first conversation she emailed him the requested reciprocity form. She testified for the second call, Pirrone called her to see if she received the form after he had filled it out and emailed it back. The reciprocity form Pirrone sent to Haley in 2013 states Selinsky is the employer's name, and that the jobsite location was the "Monroe Steel Mill." Haley testified she did not recognize Selinsky as an employer under the pipeline agreement, but she did not know all of the employers under that agreement.

Haley testified the receptionist referred Pirrone's call to Haley because Haley handles the reciprocity forms. Haley testified when Pirrone asked her for a reciprocity form she assumed he was working on the pipeline under that agreement. Haley testified Pirrone's form was not filed under a specific agreement and it was just put into the system as received. As to the non-pipeliner's, Haley testified she did not deal with them and there were not that many. Haley testified she dealt with Pirrone, a non-pipeliner, because the call was transferred to her. Haley testified for travelers who are not working under the pipeline agreement the reciprocity form would come to her from the dispatcher or directly from the BA as opposed to from the employee. Haley testified she has no responsibility for clearing in an employee. Haley testified Pirrone never told her he was calling to clear in or asked her about it. Pirrone just asked for a reciprocity form. Haley did not recall Pirrone asking her whether he had a prior reciprocity form on file. Haley did not recall seeing Pirrone's 2008 reciprocity form, and she did not recall looking up the prior form or telling Pirrone he needed a more current form. She testified, "I don't remember one way or the other."

Everly testified that, in April 2013, Lambert called Everly and told him that he heard that Selinsky had a crane at Gerdau Steel. Everly testified Lambert had been a BA with Local 324, but was let go from his BA position in the fall of 2012. Everly testified, at the time of the call, Lambert was a crane operator. Lambert told Everly that he had had spoken with one of the Chapmans at Selinsky. Lambert asked Everly if Local 324 had sent anyone out there. Everly testified he called dispatch to see if they had gotten a phone call. Everly testified he learned that no one had called. Everly testified he called Lambert back and told him they had not sent anyone. Everly testified Lambert then text Everly the phone number of one of the Chapmans either Mike or Brian.

Everly testified that upon receipt of the phone number he called Brian Chapman. Everly testified that Brian's father Mike Chapman was Brian's boss but Mike was not in the area at the time of the call. Everly introduced himself to Brian Chapman and asked if he was on the job in Monroe. Everly testified he asked Brian Chapman if he had an operator there to which Brian Chapman said yes. Brian Chapman identified the operator as Gomez stating he did not know his name, but knew his nickname. Everly testified Brian Chapman said he would give Everly's number to Gomez (Pirrone) to give Everly a call. Everly testified that he did not ask Brian Chapman if Pirrone was a member of Local 324.

Everly testified Pirrone gave him a call right after Everly's call to Brian Chapman. Everly testified, in response to Everly's question, Pirrone told Everly that he had been at the job for 3 weeks. Everly testified he asked if Pirrone was a member of Local 324 and he said he was a member of Local 18. Everly testified he asked Pirrone if he had cleared in and he said yes. Everly testified he checked to see if there was any clearance given and there was not. Everly testified concerning how Pirrone said he cleared in that Pirrone said he had a reciprocity form. Everly testified he asked who Pirrone spoke to and Pirrone could not recall her name. Everly testified that he told Pirrone, "if it was a -- if one of the girls -- none of the girls down there can clear anybody in. So if he didn't he didn't talk to dispatch." Everly testified when asked after he told Pirrone that, "the girls couldn't clear him in" what else Pirrone said, Everly testified, "I don't know. I don't remember."

Everly testified when he called Local 324 to determine if anyone had cleared in for Selinsky they looked into the system and learned that Local 324 did not even have an agreement with Selinsky. Everly testified that was when he talked to Brian or Mike, one of the Chapmans, and informed them that Monroe County was Local 324, and Local 324 did not have an agreement with them to have an operating engineer working in Michigan. Everly asked if there was a way they could get an agreement signed. Everly testified Local 324 got the agreement to Mike Chapman who gave it to someone who could sign it for Selinsky. Everly testified he told one of the Chapmans that Pirrone had not cleared in. Everly later testified he investigated Pirrone's assertion that he had cleared in by calling the dispatcher. Everly testified, "That's when I found out that no one had cleared in for Selinsky. Plus, that's when it came to light that we never had an agreement for them to work in the state of Michigan." Everly testified aside from himself and Boone, none of the other BA's would have received a call from Pirrone to clear in to work in that area. Everly testified the name of the dispatcher at the time was Saunders. Everly testified that Saunders no longer worked for the Union, and he was replaced as dispatcher in the summer of 2013.

Everly testified that he spoke to Pirrone a couple of times that day on the phone. Everly testified he told Pirrone that he was not cleared in and Pirrone responded he had a reciprocity form. Everly testified he explained the reciprocity form does not really mean that you are cleared in. Everly also testified that he could not clear Pirrone in as he was working for a company that did not have an agreement with Local 324. Everly testified, "I couldn't clear someone in to work for a non-signatory contractor." When asked if he could not clear Pirrone in because Local 324 did not have a signed agreement with Selinsky, Everly responded, "Well, yeah. And I wasn't the -- I wasn't dispatch anyways at the time. I mean, I didn't know who was on the list." Everly testified that as a BA he had the authority to clear someone in, "but I always -- I still tell them it needs to go through dispatch to find out who's on the list." When asked if no one was out of work, if he would have cleared Pirrone in, Everly testified, "Yeah. I mean, if it was – " Everly testified as follows:

JUDGE FINE: So, at that point, you couldn't have barred him from the job because he wasn't -- you had no contract?
THE WITNESS: Right. There wasn't much -- without having that agreement in -- I was just trying to figure out everything.
JUDGE FINE: So you knew he wanted to work there because he was working there, correct?
THE WITNESS: He was already there.
JUDGE FINE: Right? So if you had nobody on the out-of- work list, did he need to call you again and say I need to clear in, even though you talked to him? Why would he have to talk to you twice?
THE WITNESS: Well, we would say there's a proper channel to go through. We would like -- you know, call dispatch, get try and gain clearance.
JUDGE FINE: Yeah.
THE WITNESS: That's just what we -- that's how we tell people to do it.
JUDGE FINE: But you're the one who approve clearance, correct?
THE WITNESS: Yeah. Well, I would still -- I always tell them, you know, to call dispatch.
JUDGE FINE: So because you were not in the building --
THE WITNESS: Right, yeah.
JUDGE FINE: -- you weren't going to clear him in?
THE WITNESS: I didn't have access to see who was out of work at the time or anything.
JUDGE FINE: Right.
THE WITNESS: So I wasn't going to --
JUDGE FINE: So you didn't say, I'll check the records, see if there's anybody to work, then let him know? You didn't do that?
THE WITNESS: No. Not at -- no. Not at the time, no. No, I didn't.
JUDGE FINE: So you wanted him to call you, even though he talked to you, so you could be in the office to do that?
THE WITNESS: No.
JUDGE FINE: You could have gone to the office and done that and called him back, right?
THE WITNESS: Right. Well, I was calling the -- I was calling the dispatcher when all this was happening.
JUDGE FINE: Yeah. And did the dispatcher say there was anybody in the out-of-work list that would bar him from working?
THE WITNESS: Well, I'm not going to -- there was people on the out-of-work list.
JUDGE FINE: Right.
THE WITNESS: Just -- I mean --
JUDGE FINE: So did you call him back and say there's people on the out-of-work list, you can't work?
THE WITNESS: No. I don't remember exactly what I said, but I just said he wasn't cleared in at the time. He'd been up here for 3 weeks.
Judge Fine: I see.
THE WITNESS: Without clearing in.[13]

[13] While Everly testified the employee should talk to the dispatcher, he also testified the dispatcher would not clear someone in without talking to Everly first. Everly testified, "If it was my area, I think he would talk to me. He should talk to me first." Everly testified for the type of job Pirrone was applying for the dispatcher and the BA would normally talk to each other before they approved clearing in. Everly testified it is a two person decision but it goes through dispatch and the dispatcher does the clearing in.

Everly testified, upon reviewing his phone records for April 22 (a Monday), that at 1:15 p.m. he received a call waiting call from Pirrone. Everly testified he answered the call, which his phone log shows of 6 minute duration. He testified he already testified about the conversation he had with Pirrone that day. Everly testified he had other conversations with Pirrone that day after that call. Everly's phone log for April 22 shows he initiated two other calls with Pirrone that day, one at 2:51 p.m. for 8 minutes; and the other at 4:10 p.m. for 9 minutes. Everly testified his phone log showed he called Mr. Chapman at 1:02 p.m. on April 22 for a 6 minute call; and again at 2:23 p.m. for a 5 minute call. While Pirrone was not laid off until Thursday, April 25, Respondent did not submit any phone records for Everly beyond April 22.

Everly testified he had a further conversation with Chapman about Selinsky not having an agreement with Local 324, and that his operator came from Local 18 and was not cleared in.[14] Everly testified Chapman stated he thought there was no different agreement for Michigan than Selinsky had in Ohio for the Operating Engineers. Everly testified he told Chapman Local 324 did not have an agreement with Selinsky, that Local 324 covers Michigan, that Pirrone was a member of Local 18 and he was not cleared in. Everly testified, "I mean, I was just telling -- kind of just talking to him about, we need to -- there's some work to do here."

Everly learned about an unfair labor practice charge filed by Pirrone while he was attending the Operating Engineers general convention in Florida. Everly thought the convention took place the week after his conversations with Chapman and Pirrone. The charge was filed on April 25. Everly testified he talked to Union Attorney Bachelder about the charge. Everly testified Bachelder told him, "there was a file charged because the Company -- I intervened with the Company, talking about Mr. Pirrone, you know, just -- I shouldn't have talked to them about the Union -- him not being a member of the Union. And when they laid him off, it'd be in their best interest probably to hire him back."

Everly testified Bachelder told him to explain the proper way to clear in to Pirrone and if he chose not to, or did not get clearance and continued to work the Union could press internal charges. Everly testified that other union officials were involved in the discussion about the charge, mentioning Tom Scott, recording secretary and BA as well as Business Manager Doug Stockwell. Everly testified that as a result of his conversation with Bachelder he called Chapman. Everly testified, "I just told him that the way I handled this last week, I messed up, you know, and I would hire Gaspare back." Everly was aware that Pirrone was hired back.

Bachelder testified Pirrone's April 25 unfair labor practice charge alleging the Union unlawfully caused his termination from Selinsky came to her attention on April 30, when a copy was emailed to her by Scott. Bachelder testified she spoke to Scott several times on April 30 on calls Scott initiated. Bachelder testified Scott has supervisory authority over other BAs. Bachelder testified she also spoke to other BA's about the matter, including Everly. Bachelder testified she asked what happened concerning the charge and she was told about the clearing in rule to which Bachelder had not been previously familiar. Bachelder testified she explained to the union officials that when you have an internal union rule you cannot affect an employee or member's employment status because of it. Bachelder testified, "You can't have them run off the job. You can't get them moved off the job. The way you enforce an internal union rule is to bring them up on internal union charges if they are a member. And I indicated that what had happened was probably a problem and that we should try to fix it." Bachelder testified she told them if they were agreeable to having Pirrone go back to work they should try to effectuate that.

[14] The record is unclear as to which Chapman Everly is referring to in this conversation.

Bachelder testified she thought Scott said they were agreeable to having Bachelder try to get Pirrone back to work to resolve the charge. Bachelder testified she contacted the Employer and asked if they would put Pirrone back to work because there was a misstep by the Union in informing the Employer that Pirrone had not cleared in. Bachelder testified the Employer was agreeable so Bachelder contacted Board Agent Jackson stating they would like to resolve this by getting Pirrone back to work and to see if he was agreeable. Bachelder testified she told Jackson that Pirrone would be subject to internal union charges stating, "I absolutely did." She testified she had around 10 calls with Jackson during a 3 day period.

Bachelder engaged in email exchanges with Jackson on May 2. In the initial email submitted into evidence, Jackson informed Bachelder that Pirrone "will be withdrawing the charge, will not be seeking back pay and will be reporting to work on Monday." In her reply email, Bachelder thanked Jackson for his "assistance in resolving this." She also stated, "This is to confirm our conversations of the last few days in which I told you that the Union still does not believe that Pirrone cleared in according to internal Union rules and will handle that matter internally." Jackson responded, "Understood, but your client might want to take into consideration that another charge could be filed which may or may not include an 8(a)(4) allegation." Bachelder sent an email response on May 2, stating, "I have explained to my client that they can take no action because of the NLRB charge but that they still have the right to enforce their internal union rules."

Bachelder testified she had no conversation with Pirrone and she never told him the Union may file internal charges against him. She testified, "I didn't, but the Board agent told me he did." Bachelder testified she had a number of conversations with Jackson over those few days, wherein she told Jackson that the Union did not believe that Pirrone had cleared in correctly and that Jackson should inform Pirrone of that to take into consideration as to whether he wanted to settle the case. Bachelder testified when there was an unrepresented party, i.e. Pirrone, it was better to allow the Board Agent to confer their rights, and it can be explained they do not have to withdraw the charge. She testified, "I specifically recall several conversations in which I said to the agent, we still don't think he cleared in properly, and I asked the agent, I said, if you have evidence of it, show it to me and I'll tell my client to back off. The Board agent sent me what the evidence was that he was saying was clearing in, and I said, I've showed this to my client, and we still don't believe he's cleared in, and you need to let Mr. Pirrone know that."

As to what Jackson told Pirrone concerning the Union's position that he did not clear in, Bachelder later testified she had at least two conversations with Jackson about telling Pirrone the Union still believed he had not cleared in correctly. Bachelder testified, "The first conversation I had with Mr. Jackson, I said, Brett, you got to let this guy know we still don't think he's cleared in properly. The first time I said that, Mr. Jackson said, all I care about is getting rid of the case. I had at least one more conversation with Brett where I said, Brett, you have to let this guy know that we still don't believe he has cleared in properly and we're going to take internal union action against him, and he said -- I remember my relief that he had said something and I don't know whether he said, I told him or he knows that. It was either one or the other, but my impression was finally that Pirrone knows that we're still going to take action." Bachelder testified there was nothing preventing her from calling Pirrone directly, but she stated, "it's awkward as an attorney dealing with a layperson who doesn't know his rights. So I -- relied on Brett Jackson to convey what his rights were."

Bachelder testified that, "During our discussions about the unfair labor practice, somebody asked me, when I was explaining how you enforce an internal union rule by bringing somebody up on charges, somebody asked me, can we still do that? And I said, yes, but let's

get the ULP resolved first and then give Mr. Pirrone another chance to clear in, explain to him what he has to do, and if he doesn't clear in properly at that point, then you can bring him up on charges."

Bachelder testified she had a vague understanding of the Union's clearing in procedures. Bachelder testified, "I knew that they had -- that the person had to get consent and that the only thing he had done was talk to somebody in the office." She testified the consent was **"**Consent to be working in that jurisdiction." Bachelder testified her understanding was "if they deny consent, then he's subject to internal union charges because he is a member of the Union who agreed to follow that rule. He couldn't be kicked off the job, he could continue to work, and that was what the Union had done incorrectly. But they are subject to internal union charges for violating --" Bachelder testified the Union could fine Pirrone the amount of his salary. She testified, "I knew that they were going to bring internal union charges against him. I didn't know what the fine would be or anything like that." Bachelder testified, "I did not deal with the charges."

When asked what Pirrone failed to do concerning clearing in, Bachelder testified, "All we know was what he said was clearing in, which was the paperwork that they had sent me, and apparently was filling out a reciprocity form and talking to somebody in the office. I showed that to my client. My client said, no, that's not clearing in." When asked if she knew whether Pirrone had cleared in properly, Bachelder testified, "what I knew at that time is the client did not think what he had presented was clearing in properly." Bachelder testified "the procedure was to contact somebody about clearing in, not somebody in the office. That's all I knew." She clarified, not an office clerical. Bachelder testified the dispatcher worked in the office and "the dispatcher is a business agent, not an office clerical." Bachelder testified if someone calls the office and says he is calling to clear in, "they will refer him to the dispatcher. That's what I know now. This is not information that I had at the time." She testified, "What I knew then was what he said was clearing in, my client said was not."

Boone testified he was not involved the first time Pirrone began working for Selinsky. He also did not attend the international convention in May 2013. However, Boone testified he was aware of Pirrone returning to work pursuant to an agreement with Local 324. Boone testified he went to the jobsite where Pirrone worked in early May and had a conversation with Pirrone. Boone testified he was not under instructions to go to the site and talk to Pirrone. He testified, "No. I just wanted to make sure that he was properly instructed on what he needed to do and the consequences of not clearing in properly. That's simply what I did." Boone estimated the conversation took place a week after Pirrone returned to work, stating it took place after the other union officials returned from the convention. Everly accompanied Boone. Boone testified that, at that point Pirrone had not cleared in, so Boone went to the site to talk to Pirrone and explain to him that he had not cleared in properly; that he needed to contact dispatch; and if he did not do it properly charges could be brought against him and he could be fined with the fines being the responsibility of his home local. Boone testified Pirrone did not say a lot. Boone testified he was very clear to Pirrone that they were not there to tell him to leave the job site, nor did they speak to Selinsky. Boone testified Pirrone did not properly clear in both times when he went to work at Selinsky that is when Pirrone first started, and again when he was reinstated. Boone testified the internal union charge was filed against Pirrone because he failed to clear the second time he went to work.

When asked if Pirrone said he had cleared in, Boone testified Pirrone said, "he had talked to a girl in the office, which is not clearing in." Boone testified when Pirrone told him that he talked to a woman, Boone understood it to be Haley, who works in the dues section. Boone

testified when Pirrone said he talked to a girl in the office Pirrone could have said he spoke to her to get a reciprocity form. Boone testified Pirrone did not say he called the girl in the office to clear him in. Boone testified he told Pirrone talking to the woman in the office was not clearing in and he had to talk the dispatcher.

When asked if Pirrone called in to clear in the day Boone went to the jobsite, per Boone's direction, if there was a crane operator on the out of work list, Boone testified the "office would have more than likely told him that we have guys available to do that job." Boone testified Local 324 would not clear in Pirrone if they had men available. Boone testified since the Union had settled an unfair labor practice with Pirrone which placed him on the job, the office already knew Pirrone was working when Boone visited the site. Boone testified that, if Pirrone had called to clear in and a qualified Local 324 member was out of work it is likely Local 324's business manager would call the business manager of Local 18 and say, "we got guys available, we got a guy that's here that's working, and he won't leave on his own accord. Normally the guy just says, you know, it's not an issue. You got guys available; you leave." Boone testified that what happens next, "That's up to the employer and the guy that's working here." Boone testified, "We'd contact the home local and let them know that this guy is, you know, we have guys available and he's subject to charges." When asked if Local 324 would notify the employer, Boone testified "Yes, the member has not cleared in, yes." However, Boone testified that he had no conversation with Selinsky and he did not inform them that Pirrone had not cleared in. Boone also testified he never called Local 18 and told them that Local 324 had people on the out of work list and Pirrone would not leave the job. Boone did not know if that conversation happened. Boone testified when he went out to see Pirrone at the jobsite, he did not know if someone was on the out of work list that was qualified to do Pirrone's job. When asked if he checked, Boone responded Everly was the agent. Boone testified that if Everly did not check the dispatcher knew as he had the out of work list.

Boone testified that Lambert was on the out of work list at the time concerning the situation with Pirrone. Boone testified that he never saw the list but he was told Lambert was on the list by Everly. Boone testified as follows Everly told Boone the first time Pirrone was trying to clear in that Lambert was on the out of work list. Boone testified, "The information that I got from Matt was that Lambert had called and let him know that there was a Local 18 member working at Gerdau Steel that had not cleared in. He lives down the street, and he felt that I'm on the out-of-work list, why didn't I get the job?" Boone testified that it was Lambert's calling Local 324 that led the Union to check up on it and eventually contact Selinsky.

Everly testified that he accompanied Boone to talk with Pirrone at the jobsite. Everly testified the purpose of the visit was to let Pirrone know there was a proper way to call and get clearance to work. Everly testified they wanted Pirrone to call the dispatcher. Everly testified concerning a reciprocity form, Pirrone "told me he had it sent to him. And if it's not signed, you know, it has to be signed by a business agent." However, Everly testified, "No, we didn't refuse to sign it." Everly testified the reciprocity form did not have to be signed in the presence of a BA explaining, "we have a pipeline agreement that things work different. Some of them do get sent in…". Everly testified a BA could have signed Pirrone's reciprocity form once it was sent in, and Pirrone did not have to be there for a BA to sign it. Everly testified he never saw Pirrone's reciprocity form. Everly testified, "He just told me that he had -- he has a reciprocity form. He never told me he sent one in." Everly then testified as of the date of the unfair labor practice hearing he never checked if the Union had a reciprocity form for Pirrone stating, "Well, I know that they must have sent it in because he had contributions sent in, in his name." Everly testified they day he and Boone went to the site as to Pirrone's reciprocity form, "Yeah, we could have seen if there was one submitted."

Everly testified concerning the jobsite visit to Pirrone, Boone did the talking. Everly testified he did not speak. Everly testified Boone said, “no one's telling you, you need to leave. No one's telling you anything. You need to call and try and gain clearance.“ Everly testified they would not have refused him clearance right there. When asked if Pirrone called in if they would have refused him clearance, Everly testified, “I don't know. I don't know what would happen. But the -- he never called in.” Everly testified he never looked to see if there were people on the out of work list in April or May 2013, stating, “I didn't, no. I mean, I just called to see if there was anyone tried to clear in. I didn't personally look on the list.” Everly testified he did not know if Lambert was on the list. Everly testified there would have been an out of work list for the time period that would show Lambert’s name on it at the time Selinsky was asked to layoff Pirrone to make Lambert a job offer. Everly testified he did not know if the Union still had it. He testified the Union had not produced it for the trial. Everly testified he did not check the out of work list to see if Lambert’s name was on there. Everly testified that when he and Boone went to speak to Pirrone it was not Everly’s position that Pirrone had not cleared in at all, but he had not cleared in properly. Everly testified, “I knew he talked to somebody. But it was, just wasn't the right person.” Everly testified when Pirrone stated he spoke to a woman that Everly knew it could not be the right person. Everly testified that Pirrone did not tell him that Pirrone also called a BA who was a man. Everly testified the Union fined Pirrone when he returned to work because he did not call the dispatcher. Everly testified as follows:

> Q. BY MS. ROUMAYAH: Your argument is not that you asked Selinsky to lay off Gaspare because there was other people on the out-of-work list that should have been called as a crane operator for him; is that correct? Your argument to Selinsky was, hey, this guy didn't clear in, let's lay him off?
> A. He wasn't cleared in.
> Q. So it had nothing to do with the out-of-work list at that time?
> A. No. I didn't bring anything up to them about an out-of- work list.
> Q. Strictly just clearing in?
> A. Right.

Page testified he filed a charge against Pirrone because Page was informed by Local 324’s Business Manager Stockwell and Everly that Pirrone had not cleared in with dispatch and it was Page’s responsibility as president to enforce the constitution and bylaws. Page testified he was told Pirrone had not cleared in, and was given instructions that he needed to clear in before performing work in Local 324’s jurisdiction. Page testified he never spoke to the dispatcher to determine if Pirrone had cleared in properly. Page testified there is a 30 day time period for the bringing of a charge. Page testified, other than Pirrone, he could not recall bringing a charge against a traveler in the past 5 years for failing to clear in.

Page testified Pirrone’s trial was held on June 19 at a regular general membership meeting. Page testified there are time constraints in that the member has to be informed of the charge and trial, and the trial must be held at the next general membership meeting in order to follow the procedure outlined in the constitution. Page testified he presided over the general membership meeting, and Page appointed Financial Secretary Ken Dombrow to preside over the trial because Page was the charging party. Page testified that, during the trial, Page made comments about the reason for the clearing in rule. Page testified Pirrone referred to it in his testimony pertaining to Page receiving a standing ovation. Page testified, “I think you can tell that I'm a little bit emotional when I get calls from members that are in dire straits, and had conveyed to Gaspare that my responsibility as president was to look out for the members of Local 324 in my jurisdiction first, and then travelers, and whether I conveyed it as eloquent here

or not, I can't remember honestly, but that was what my gist of my conversation was." Page testified at these meetings it is commonplace to vote by standing ballot stating, "It is what has always happened since I've been a member in the Local. For 33 years." Page testified this is done for any vote. Page testified usually a motion is made in the interest of time to take a standing vote "because a secret ballot vote or a handwritten ballot vote takes a long time to try to accomplish with a lot of members at a meeting." Page testified the procedure for calling for a vote is to state three times so there is no misunderstanding as to what you are saying. It is the same procedure that is used in a nominations meeting. Page testified Pirrone was found guilty and fined. He testified there were 59 votes, 56 to convict and 3 not to convict. Page testified people were asked to stand and remain standing until the vote was counted. Page testified people are asked to stand three times for guilty before the vote is counted, and then asked three times to stand for not guilty. He explained, "For some reason, people don't always get what you say the first time, so you say it -- it's been done for my 33 years in the Local the exact same way." Page testified there have been several disciplinary cases for infractions of the bylaws other than clearing in. Page testified the same procedures are followed for all of the disciplinary cases in that, "The script of the trial is exactly the same."

In the International Union's constitution provides at Art. XXIV, Subdiv. 7. Section (o) pertaining to trials it is stated, "The said members shall vote by ballot either guilty or not guilty on the merits of each individual charge. Three tellers….shall collect the ballots and announce the verdict." Despite the language in the constitution stating the members shall vote by ballot, and the tellers should collect those ballots, Page testified concerning Local 324's relying on the members to stand for the vote count, rather than a written ballot that, "I would argue that the ballot could be them raising their hand or standing. A ballot is a vote in my mind, looking at this." Page testified the word collect means, "Count. Record the number of votes." When asked if Local 324's standing vote procedure was consistent with the constitution, Page testified, "I believe so." Page testified he did not see how members votes could be influenced by making them stand up to vote stating they all had the same interests as the nature of the proceeding was "looking out for their best interests ultimately." Page testified that at Pirrone's trial there were six calls for a standing vote three for guilty and three for not guilty. Page testified there was no pause between each of the three requests in that they are made as part of one sentence. He testified you are not encouraging additional people to stand up stating while that is an inference that is not how it goes. Page testified there was no coercive effect of a standing vote in this case, although he admitted there could be one in some cases. Page testified they are, "All members of the same local." Page explained, "I don't understand what the influence would be; ultimately looking out for their best interests ultimately."

When Page was asked if Pirrone made an offer to Local 324 to settle his charge at the June 19 trial where Pirrone stated he left the job on June 18 and that he would not work in this local again for them to just drop the charges against him, Page testified, "I was not aware of that specific offer." However, Page was shown the Union's notes of Pirrone's trial where it was revealed that at the trial Pirrone stated if the Union withdrew its charge against Pirrone, he would withdraw his charge against the Union. The notes reveal Pirrone stated he just wants to go back and retire and never come back. Page testified, "Those are the minutes from the meeting. That's very possible that he said that. I do not remember it specifically in that fashion. I would offer though that the damage had been done at that point." Page explained, "Our member had already missed out on that work that had been performed for however long that period was, the opportunity to perform that work."

Page testified he had heard Lambert replaced Pirrone when he was laid off from April 25 to May 6. Page did not know who replaced Pirrone on June 18. Page testified he was aware of

the fact at the time of the unfair labor practice trial that Lambert was on the out of work list at the time Pirrone started working for Selinsky. Page testified he did not know if Lambert was on the out of work list at the time Local 324 was pursuing charges against Pirrone for failing to clear in. Page testified he did not know at the time, but Lambert was on the list "for various periods. We asked for Bobby's out-of-work list records, and they were e-mailed this morning, and I looked at them. That's the extent of my knowledge. But I didn't look at them closely enough to identify exact dates and everything else, so." Page also testified that in 2013, he did not know Lambert was on the out of work list. Page testified, "I had no idea at the time, …". He testified he did not know whether anyone qualified to operate Pirrone's crane on that job was on the out of work list. Page testified, "I did not handle the out-of-work list. I don't know that I've ever opened the out-of-work list. I've never been the dispatcher." Thus, Page admitted when he previously testified concerning Pirrone's proposed settlement that the damage had already been done that there may have been no damage, as there may not have been someone on the out of work list qualified to perform the work.

Page testified the constitution provides the trial is held at the next regularly scheduled general membership meeting and that was how it was done. However, Page testified the Union's minutes of the meeting show the meeting was labeled a special call meeting. When asked if the meeting for Pirrone could have been delayed a month so that it could have taken place in Detroit, Page testified the constitution says it is heard at the next regular general membership meeting and there was no manipulation to force Pirrone to drive a distance to attend a trial in Grand Rapids as that was where the meeting fell. Page testified he did not recall seeing a request by Pirrone to delay the hearing for a month to give him time to prepare, or to move the hearing to Detroit due to the length of drive for Pirrone to attend in Grand Rapids. The international constitution provides at Art. XXIV. Subdiv.7. Section (n), "the President shall cause the parties to be notified of the trial date, which must be the next regular meeting thereafter. Unless a request for postponement of the trial shall have been made to and granted by the President, the trial shall proceed upon the date set."

Page testified that in addition to Pirrone there have been several travelers that may have been working in Local 324's jurisdiction who had not cleared in and who at some point had been talked to and either cleared in properly or left the job. Page testified he did not recall anyone who was warned they had not cleared in properly but continued to work. Page testified that he advises members of Local 324 what they have to do to clear in at other locals. Page tells them before entering the local's jurisdiction they should call the local and tell them they are planning on coming to work, ask for the dispatcher, and follow whatever procedure that local advises them to clear in. Page testified he has been told there have been several situations where Local 324 members have been fined as much as $10,000 for not clearing in. Page testified usually a phone call would come from another local stating they have members from Local 324 working there and they did not clear in. Page testified, at that point, Local 324 would reach out to the member and explain to them the consequences if they continue to work and do not properly clear in with the area local. Page testified it is Local 324's responsibility to collect the fine for another local before Local 324 can continue to accept dues from that member. Page testified failure to pay a fine owed another local would affect their membership status with Local 324 as far as being a member in good standing. Page testified in 2006 or 2007, Local 324 "had some individuals that were working down south, I want to say Kentucky or Tennessee, and the home local fined our member $10,000 for working down there. Page testified he did not know of any discipline case other than Pirrone in which Local 324 fined a traveler $10,000.

Page testified he searched Local 324's records and found a charge brought against an individual in December 2006 for working within Local 324's jurisdiction without obtaining consent

of the local through proper clearance procedures. Page testified he had some recollection of the incident as he attended the trial and served as secretary for those proceedings. Page was not the president at the time. Page produced three documents pertaining to this matter. The first, dated December 4, 2006, notified the individual of a trial to be held on December 13, 2006, for working at the craft in the jurisdiction of Local 324 without the consent of the Local through the proper clearance procedures. The second correspondence to the same individual was also dated December 4, 2006, which was an offer of settlement from the Union, allowing the individual to pay half the charged fine rate in the amount of $1093.80, rather than the charged amount of $2187. The third document was minutes of the trial, which Page testified he had stored in his computer. The minutes show there was no ballot taken, rather the vote was taken by the members standing to show their vote. The member, as per the minutes, was issued a fine in the amount of $2187.60. The December 4, 2006 settlement offer explained the formula upon which the fine was calculated based 5 days wages and fringe benefits, and an additional $100 fine per incident. The minutes gave the same calculation, expressly omitting the day the employee was warned from the tabulation.

Boone testified there had been times when Local 324 had to collect fines for other locals. He testified that in the last five years that has happened three times that he was aware concerning a company named Korneffel. Boone testified that Local 324 members worked in the jurisdiction of another local, were brought up on charges, fined in the amount of what Boone thought was $5000 or $10,000. Boone testified they were brought up on charges by the other locals but it was Local 324's responsibility to collect the fine. Boone testified the fine was for not clearing in. As set forth above, Page did not support these claims, only citing incidents in 2006 and 2007. Boone testified he was only aware of one instance when Local 324 had internal union charges in the past five years that occurred in his area. Boone appeared to be referencing the charge brought against Pirrone. Boone testified "There's been numerous occasions that it's came up and got to that point but the member has decided to leave."

C. Credibility

In considering his demeanor, the documentary evidence, and the content of his testimony, I found Pirrone to be a credible witness. Pirrone testified that he knew the procedure to clear in at Local 324 because he had been doing it once or twice a year over the past 40 years. He testified he underwent safety training on April 1 for Selinsky, and he called in to Local 324 on April 2, his first formal day of work to clear in, with his phone records showing he had a 3 minute call at 1:14 p.m. on that date. Pirrone credibly testified he told the receptionist he asked to speak to the BA to clear in, was referred to a man who Pirrone assumed was the BA. Pirrone informed the man Pirrone's name, the jobsite location, and that he needed to clear in. During the call, Pirrone informed the man in response to questions that he was going to be running a crane, for a 3 to 4 month job, and the name of his employer. Pirrone told the man the crane had not arrived yet, and the man told him to call back when the crane arrived. When the crane came in, as verified by his phone records, Pirrone called Local 324 at 8:30 a.m. on April 8 for a 4 minute call. Pirrone told the receptionist he wanted to talk to a BA, and then a man came on the line. During the conversation, Pirrone told the man, in response to questions, Pirrone's name, who he was working for, what he was going to be doing, how long the job was going to be, what crane Pirrone was running, Pirrone's home local, and he gave the man his Union number. Pirrone explained he gave the man the above information because that is how you clear in. On April 8, Pirrone's phone records show he also made calls to Local 324 at 12:12 p.m. and again at 2:43 p.m. the latter of which was of 6 minute duration. Pirrone testified that during the latter call he asked to speak with the BA. Pirrone testified the purpose of the call was to determine his contractual wage rate. The man he was referred to asked Pirrone his name,

where he was working, what he was doing and how long he was going to be there. Pirrone testified he informed the man he was a Local 18 member, and upon Pirrone's request he was informed his wage rate. The circumstances surrounding this call were confirmed by longtime Local 324 member Menchaca, who testified he called the hall on Pirrone's behalf to determine the contractual wage rate, and was told to have Pirrone call in for himself.

Pirrone, as revealed by his phone records again called Local 324 on at 3:05 p.m. for a 5 minute call. Pirrone spoke to the receptionist and stated he needed to talk to someone about a reciprocity form. Pirrone was then referred to Haley. Pirrone credibly testified he asked her if he had a current form on file. Haley researched the request and when she returned to the phone she told Pirrone he had a form on file, but it was not current. Pirrone gave Haley his email address, and she sent him a blank form. Pirrone emailed the completed form to Haley that night. On the filled out form, Pirrone stated he was a Local 18 member, that he was working for Selinsky at the Monroe Steel Mill with a 3 to 4 month approximate job duration. The form contained a description of the crane Pirrone was operating as well as his signature with an April 8 date. Pirrone called Local 324 on April 9 at 8:41 a.m., and his phone records show a 2 minute call. He testified he spoke to Haley, who confirmed she had received Pirrone's form. Pirrone he asked her what the witness line on the form was. Haley told Pirrone she would have a BA sign it. The form itself called for a business representative's name to be printed on the form underneath the line calling for a witness signature. Pirrone asked Haley if he was good to go, and she said yes. Pirrone was subsequently issued a vacation holiday fund stub dated November 29 from Local 324's Vacation and Holiday Fund of Michigan showing funds were taken out of Pirrone's check for various purposes for his work at Selinsky for work dates of April, May, and June 2013.

Haley, who was called by a witness by Respondent, in large part, confirmed Pirrone's testimony. She testified they only had two calls. Haley confirmed that Pirrone never told her he was calling to clear in, and never asked her about it. She testified he just asked her for a reciprocity form. To the extent there were any discrepancies in their testimony about their contacts, I credit Pirrone's account. Pirrone had more reason to recall their discourse as he was calling about himself whereas Haley testified she was receiving a lot of calls during this period. When asked to discuss Pirrone's account of the specific details of the call Haley professed a lack of recollection. Moreover, while Haley stated Pirrone did not tell her where he was working in their initial call, those details were set forth on the form he provided to her including the fact that he was working at a Steel Mill. Yet, Haley testified she assumed Pirrone was working under the pipeline agreement. I question the veracity of this aspect of Haley's testimony. First, she was employed by Local 324 at the time she testified demonstrating she was not a disinterested witness; second the filled out form listed the name and location of the employer, and third the form required a BA's signature as Haley informed Pirrone. The form signed by a BA or any other witness was not produced by Local 324 at the hearing, although Pirrone's benefits were deducted for various funds for the period Pirrone worked at Selinsky including April, a period of time for which Everly maintained Local 324 did not even have a contract with Selinsky. This would indicate the form was witnessed by a union official other than Haley and processed. Haley, as Pirrone credibly testified, gave him an assurance that she would have a BA sign the form. It is likely if she did as promised a BA would have recognized the location and the name of the employer listed did not come under the pipeline agreement.

In sum, in addition to Pirrone's two phone calls with Haley about a reciprocity form, Pirrone's phone records and testimony reveal he made one call on April 2 of 3 minutes duration, and additional calls on April 8, one of 4 minute duration, and another of 6 minute duration, all of which he asked to talked to a BA, and gave the man who came to the phone specific

information requested to clear in, including the name of the employer, the jobsite, Pirrone's Local 18 membership, and the estimated length of the job. In fact, as per Pirrone's credited testimony the first two calls were with a BA at the hall, with the specific purpose of Pirrone's clearing in. The third call was to verify Pirrone's contractual wage rate at the site. Thus, Pirrone made no secret of his being at the site and in fact, had multiple discussions with a BA at Local 324's location about clearing in, and his work activities there, with one call on April 2, and the other two on April 8, as the BA at Local 324's location directed him to do.

Pirrone credibly testified he called Local 324 and asked for the BA to clear in, the same as he had been doing over the past 40 years. Similarly, Menchaca a member of Local 324 for 15 years testified when he works outside of Local 324's jurisdiction he calls the local union there and asks to speak to the BA to clear in. As to signing the local's reciprocity agreement for working as a traveler, Menchaca testified it is different all the time in that sometimes a BA will bring the form to the jobsite, but one time he went to the union hall to fill out the form. Lafaso, a member of Local 18 for 27 years, testified he has worked in Local 324's jurisdiction 20 times over the past 25 years. He testified when he does so he has to call Local 324's dispatch to tell them he is coming to work in order to clear in. Lafaso testified he does not have to fill out a reciprocity form every time he works in Michigan as he assumes Local 324 already has one on file. He testified that only sometimes does a BA show up at the jobsite to have him fill out a reciprocity form when he travels to Michigan. Lafaso testified that he called Local 324 dispatch to clear in during the spring of 2013. Nevertheless, BA Houston came out to the jobsite and asked Lafaso why he did not clear in. Lafaso told Houston that Lafaso had called dispatch. However, Houston told Lafaso to call Houston directly in the future. This credited testimony reveals Local 324's clearing in procedures as well as its reciprocity form requirements are haphazard at best.

Page testified clearing in to work in Local 324's jurisdiction always involves the dispatcher who maintains the out of work list and keeps notes of who calls the local and what they call about. Page testified the dispatcher is also a BA. Page testified there is only one dispatcher and a BA other than a dispatcher does not work at the union hall on a regular basis. Page, Boone and Everly testified all calls to the union hall would go to a receptionist, and if a traveler calls stating they wanted to clear in the call would be directed by the receptionist to the dispatcher. Boone testified if a BA who is not the dispatcher happens to field a clear in call, their job is to direct the information to the dispatcher. Page testified Local 324 maintains no written procedure directing a traveler to call and ask for the dispatcher. Page testified when a traveler calls to clear in usually a BA will then go to the jobsite to check the traveler's membership card to make sure he is a member in good standing and then the BA will give the traveler a reciprocity form to sign. Both Page and Everly testified that one of the duties of the dispatcher when a traveler calls to clear in is to check to the Union's records to make sure it has an agreement with that particular employer. They both testified the dispatcher would check the out of work list, and possibly consult with a BA depending on the nature of the job, and if there is a Local 324 member with the appropriate skill set who needs work, Local 324 would bar the traveler from clearing in. Unlike Page, who testified the BA would go out to the site to check the traveler's membership status; Everly testified the dispatcher would call the traveler's home local to make sure they are a member in good standing. Everly testified, if a job is two weeks or longer a traveler gets a reciprocity form. However, Haley testified traveler's file a reciprocity form every time they come to work in Michigan. Page and Everly testified the dispatcher would consult with a field BA to see if there are Local 324 members available to perform a long term assignment who may not be on the out of work list. Whereas, Boone's testimony was to the effect that the dispatcher could clear someone in by simply consulting the out of work list maintained at the union hall by the dispatcher.

Everly testified, aside from himself and Boone, none of the other BA's would have received a call from Pirrone to clear in to work in the area of Pirrone's jobsite. Neither Boone nor Everly claimed to have received such a call from Pirrone. Everly testified the name of the dispatcher in April and May was Saunders. Everly testified Saunders was replaced as dispatcher in the summer of 2013, when Saunders started working in the field as a BA. Boone testified Saunders was let go altogether by Local 324 around 4 to 5 months before the unfair labor practice trial, which would have been around August or September 2015, whereas Everly testified Saunders was let go earlier the year of the trial which took place in January 2016. Both claimed they did not know the reason Saunders was terminated.

Pirrone testified he worked for Selinsky with no problem, until around the last week of April. Pirrone testified that at that time, he received a call on his cell phone and someone asked if this was Gomez. Pirrone said yes and the person stated this is Matt (Everly) from Local 324. Everly told Pirrone that he did not clear in right and Pirrone needed to quit working at Selinsky immediately. Pirrone testified Everly did not say he was a BA. Pirrone told Everly that Pirrone did clear in right, that he could prove it, and Pirrone did not know what Everly was talking about. Pirrone was referring to his phone records and the reciprocity form he had filled out in terms of proving he cleared in. Pirrone testified that Everly responded, "We'll go from here." Pirrone testified that Everly called Pirrone on his cell phone. He testified he did not recall calling Everly first. When asked if he recalled Brian Chapman telling him to call the Union, Pirrone testified, "I don't recall." Pirrone testified that, "Brian told me the week of, when this was going down, that the Union had contacted him to lay me off, yes." Pirrone testified, "He said that they were going to force them to lay me off to hire one of their guys -- because I didn't clear in."

Pirrone credibly testified, on April 25, Mike Chapman came up to Pirrone and said he had to lay him off. Pirrone asked why, and Mike Chapman said the Union was strong-arming him and forced them into laying Pirrone off and Selinsky did not want to deal with it. Pirrone testified Mike Chapman told him he had to hire Lambert and Lambert was coming to take Pirrone's job. Pirrone filed an unfair labor practice charge against Local 324 on April 25, in case number 7-CB-103730.

Mike Chapman credibly testified to the following: After Pirrone started working, Mike Chapman had conversations about Pirrone with a Local 324 BA whose name he did not recall. The BA stated Pirrone did not clear in, and the BA wanted Selinsky to replace Pirrone with Lambert, stating that Lambert was "a local guy." Mike Chapman testified he talked with the BA a few times, and that "I remember a couple of phone calls. And then I had to lay him off." Mike Chapman testified that as a result of the calls he laid off Pirrone. When asked why he laid off Pirrone, Mike Chapman testified in reference to Local 324, "they wanted me to bring in Lambert, Bob Lambert." Mike Chapman told the BA that he did not want to lay off Pirrone because he was a good operator. The BA told Mike Chapman that Pirrone was not cleared in and he had to lay him off. While, Mike Chapman testified he not recall if he laid off Pirrone or his son Brian Chapman laid him off, I have concluded that Pirrone credibly testified to the conversation in which it was Mike Chapman who laid off Pirrone. Mike Chapman testified that after Pirrone's layoff, Mike Chapman hired Lambert as Pirrone's replacement.

Everly testified in April 2013, Lambert, a crane operator, called Everly and told him Selinsky had a crane at Gerdau Steel. Everly testified Lambert was a former BA with Local 324. Everly testified Lambert asked him if Local 324 had sent anyone out there. Everly testified he called dispatch to see if they had gotten a phone call, and he learned that no one had called. Everly testified he called Lambert and told him they had not sent anyone. Everly testified he

called Brian Chapman and asked if he had an operator at the jobsite in question. Brian Chapman identified the operator as Gomez (Pirrone) stating he only knew his nickname. Everly testified Brian Chapman said he would give Everly's number to Pirrone to give Everly a call.

Everly testified Pirrone gave him a call right after Everly's call to Brian Chapman. Everly testified that during the call he asked if Pirrone was a member of Local 324 and he said he was a member of Local 18. Everly testified he asked Pirrone if he had cleared in and he said yes. Everly testified he checked to see if there was any clearance given and there was not. Everly testified concerning how Pirrone said he cleared in that Pirrone said he had a reciprocity form. Everly testified he asked who Pirrone spoke to and he could not recall her name. Everly testified he told Pirrone "none of the girls down there can clear anybody in." When asked what Pirrone said in response to Everly's statement that "the girls couldn't clear him in," Everly testified, "I don't know. I don't remember."

Everly testified when he called Local 324 to determine if anyone had cleared in for Selinsky they looked into the system and learned that Local 324 did not even have an agreement with Selinsky. Everly testified that was when he talked to Brian or Mike, one of the Chapmans, and informed them that Monroe County was Local 324, and Local 324 did not have an agreement with them to have an operating engineer working in Michigan. Everly asked if there was a way they could get an agreement signed. Everly testified Local 324 got the agreement to Mike Chapman who gave it to someone who could sign it for Selinsky. Everly testified he told one of the Chapmans that Pirrone had not cleared in. Everly later testified he investigated Pirrone's assertion that he had cleared in by calling the dispatcher. Everly testified, "That's when I found out that no one had cleared in for Selinsky. Plus, that's when it came to light that we never had an agreement for them to work in the state of Michigan." Everly testified he spoke to Pirrone a couple of times that day on the phone. Everly testified he told Pirrone that he was not cleared in and Pirrone responded he had a reciprocity form. Everly testified he explained the reciprocity form does not really mean that you are cleared in. Everly also testified that he could not clear Pirrone in as he was working for a company that did not have an agreement with Local 324. Everly testified, "I couldn't clear someone in to work for a non-signatory contractor."

Everly later testified, upon reviewing his phone records for April 22 (a Monday), that at 1:15 p.m. he received a call waiting call from Pirrone. Everly testified he answered the call, which his phone log shows of 6 minute duration. He testified he already testified about the conversation he had with Pirrone that day. Everly testified he had other conversations with Pirrone that day after that call. Everly's phone log for April 22 shows he initiated two other calls with Pirrone on April 22, one at 2:51 p.m. for 8 minutes; and the other at 4:10 p.m. for 9 minutes. Everly testified his phone log showed he called Mr. Chapman at 1:02 p.m. on April 22 for a 6 minute call; and again at 2:23 p.m. for a 5 minute call. While Pirrone was not laid off until Thursday, April 25, Local 324 did not submit any phone records for Everly beyond April 22.

I did not find Everly's testimony to be very convincing concerning the events leading to Pirrone's April 25 termination. First, I have concluded that Pirrone called Local 324 on April 2, and again on April 8, and spoke to Saunders to clear in at which time Pirrone was allowed to continue to work for Selinsky. I have concluded Pirrone spoke to Saunders because Respondent's witnesses uniformly testified Saunders was the only BA regularly working at the union hall; and that as dispatcher all calls by travelers asking to clear in would have been referred by the receptionist to Saunders, and any other BA who by happenstance would have received a call about clearing in would have referred the information and/or the call to Saunders. Thus, I have concluded Pirrone did clear in. So, I do not credit Everly's claim to the contrary

that he called dispatch (Saunders) and was told no one had cleared in, or that he was told at that time Selinsky did not have a contract with the Union.

Everly relied on phone records to testify he had phone calls with Brian Chapman on Monday, April 22, as well as with Pirrone on that date. Yet, Pirrone was not laid off until Thursday April 25, and Mike Chapman credibly testified the layoff came after he personally had multiple conversations with a BA requiring him to layoff Pirrone and replace him with one of "our guys" former Local 324 BA Lambert. I have concluded Everly was the BA who made multiple calls directly to Mike Chapman as Mike Chapman testified, that these calls took place after April 22, since Everly's calls to Brian Chapman did not accomplish his goal of having traveler Pirrone terminated. Everly's testimony reveals that Selinsky was located within his area as a BA, and that only Everly or Boone would have been involved with contacts concerning this employer. Since Boone testified he was not involved at the time of Pirrone's first layoff, I have concluded that it was Everly to whom Mike Chapman spoke to who insisted and thereby caused Pirrone's April 25 layoff. Moreover, I have also concluded that at the time he got Pirrone terminated on April 25, that despite his contention to the contrary, Everly was not informed by Saunders that Pirrone had not cleared in, or that Selinsky did not have a contract with Local 324. First, I have found Pirrone did clear in, so I discredit Everly's contention that Saunders told him otherwise. Moreover, although Pirrone filed his current unfair labor practice charge on May 20, noting how early Respondent obtained counsel for the first charge, there seems to be an odor permeating here, when in the face of the second unfair labor practice charge, the Respondent did not maintain a copy of Saunders' log book for April and May in that they were reported by counsel as conveniently having disappeared at the trial. Along these lines Saunders was no longer the dispatcher not long after these events took place, and that in fact he was laid off altogether within months before the January 2016 trial. Dispatcher Saunders was also not called to testify at Pirrone's June 2013 internal union trial to verify that Pirrone did not clear in.

Everly's claim that he was aware that Respondent did not have a contract with Selinsky at the time of Pirrone's April 25 layoff is further undermined by Everly's insistence to Brian and Mike Chapman that Pirrone be laid off at a time he claimed to have known the Union did not have a contract with this employer. Any doubt as to this claim is clearly eviscerated by Everly's insistence that Selinsky hire Lambert as Pirrone's replacement to an employer where Everly claimed he knew the Union did not have a contract. Everly's fawned concern at the hearing that Selinsky could not deduct benefits from Pirrone at the time it had not entered a contract with Local 324 would apply equally to Lambert. Yet, Everly referred Lambert to replace Pirrone. Finally, the Employer did not enter a contract with Local 324 until May 9, which was after the Union had Pirrone reinstated, and Everly and Boone visited the site on May 8 as part of the Union's plan to cause Pirrone to quit, fine him a large amount of money, or both. The Union's sending Lambert out to work for an employer with which it contends it had no contract demonstrates it was only aware or, at best, concerned about the Employer's contract status after Pirrone resumed his employment on May 6 at the Union's behest. This concern about the Selinsky's contract status only revealed itself after it was the Union's intent to have Pirrone reinstated and then brought up on internal union charges. Even Bachelder, in response to Pirrone's initial charge filed on April 25, testified that the Union was contending Pirrone did not clear in. Yet, she never clarified how this would apply to an employer with no contract with the Union. The Union's shifting positions as evinced by Everly's shifting testimony underscores an element of pretext. For Everly at one point testified he did not check the Union's out of work list when he first had Pirrone terminated, rather Everly purportedly was only concerned with Pirrone's failure to clear in, which I have found Pirrone did. While Everly never bothered to check the out of work list, Mike Chapman's credited testimony reveals Everly insisted on Selinsky replacing Pirrone with Lambert. Noting the out of work list was not produced at the

trial, it may have been that former BA Lambert was sent out, bypassing others who had legitimately signed up on the list.

I have credited Pirrone's testimony over Everly, Boone, and Page concerning the events to which they testified. I am aware that Everly testified it was Pirrone who initiated their first phone call, while Pirrone testified it was Everly. Everly's phone records for April 22 seem to indicate Pirrone placed the initial call to Everly. Everly testified this was based on Everly's asking Brian Chapman to have Pirrone call him. However, I do not find this standing alone sufficient to undermine Pirrone's credible testimony as to the content of the call. I also note Everly's phone records reveal he had three phone calls with Pirrone on April 22, totaling 23 minutes of conversation. I view Pirrone as an intelligent individual who had cleared in many times in the past. Therefore, I do not find as Everly claimed that in all that discussion Pirrone only stated he cleared by his phone contacts with Haley. Haley's testimony supports this conclusion in that she testified Pirrone never sought to clear in through her or asked her about it. I find rather, that Respondent's witnesses were well aware through their contacts with Pirrone and Saunders that Pirrone had cleared in with Saunders, and that they seized on the fact that he alerted them to his filing of a reciprocity form as a pretext for asserting that Pirrone had not properly cleared in. This is confirmed by the incredible repeating of Everly in his phone contacts in with Pirrone in April, by Bachelder from her contacts with the Board agent after Pirrone's initial charge, and Boone regarding his worksite visit with Pirrone on May 8, that Pirrone in reference to clearing in repeatedly only explained that he had contacted a clerical in the office (Haley) to obtain a reciprocity form. Pirrone's repeated contacts on April 2 and 8 with Local 324 suggest otherwise, his past history of clearing in suggests otherwise, the lack of maintenance of the Union's records for this period of time suggests otherwise, and the unlikely event that Everly, Bachelder, and Boone became aware of the exact same story based on three different encounters suggests that the Union's reliance on this argument is pretext to justify Pirrone's removal from the job when a former BA wanted traveler Pirrone's job and punishment for Pirrone's refusal to relinquish the job when he had in fact cleared in, and because Pirrone had the temerity to file an unfair labor practice charge against Local 324. Thus, unless otherwise stated I have credited Pirrone's testimony.

D. Analysis

1. Pirrone's withdrawal of his initial unfair labor practice charge is not a bar to any of the allegations in the current complaint

In *Auto Bus, Inc.,* 293 NLRB 855, 856 (1989), the Board stated with respect to a non-Board settlement of an unfair labor practice charge that:

> In the absence of a Regional Director signing or approving a settlement agreement, any such agreement between a charging party and a respondent which resulted in the withdrawal of the charge is viewed by the Board as a private arrangement which does not estop the Regional Director from proceeding on any new charges alleging the same conduct as the withdrawn charges.
>
> The judge there found, with Board approval, that while the Regional Director approved the union's withdrawal request, he did not enter into or approve the private agreement between the parties. Moreover, the Regional Director had made no attempt to resolve the unfair labor practices, unlike the situation in *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978), in which the settlement agreement, which was a Board settlement, provided that the employer take certain remedial action. Accordingly, based

on the nature of the settlement agreement, the judge in *Quinn* found, and the Board agreed, that the Regional Director was not estopped from issuing a complaint.[3]

Here, as in *Quinn*, the Regional Director did not sign or approve the non-Board settlement agreement. Thus, this was a private arrangement between the parties. Although the General Counsel does not dispute the Respondent's assertions that a Board agent was involved in the settlement negotiations that led to the withdrawal of the charge, we find that such Board agent involvement is immaterial. The Charging Party initiated the request that the charge be withdrawn and the Regional Director merely approved the request. Also, as the General Counsel points out, the non-Board settlement merely provided for the payment of a sum of money to employee Constantino and did not remedy the independent 8(a)(1) allegations. Accordingly, we find that the non-Board adjustment did not estop the Regional Director from proceeding on any new charges alleging the same conduct as the withdrawn charges,[4] whether or not a complaint had issued in the case involving the withdrawn charge. The fact remains that the Regional Director was not an official party to the non-Board adjustment.

The practical effect of any ruling to the contrary would likely be either that Regional Directors would have to thoroughly investigate proposed non-Board adjustments or simply refuse to honor them. Neither alternative seems conducive to fostering labor peace or a wise husbanding of this Agency's scarce resources.

Similarly, In *Dilling Mech. Contractors, Inc.,* 348 NLRB 98, 103 (2006), the Board stated:

> The General Counsel was not a party to the non-Board settlement agreement, was not obliged to undertake any action thereunder, and therefore could not breach the agreement, even though he was involved in the settlement discussions between the parties. Cf. *Auto Bus*, 293 NLRB 855, 856 (1989) (finding General Counsel not estopped by non-Board settlement agreement, even where Board agent involved in informal settlement discussions); *Gladstones 4 Fish*, 282 NLRB 1285, 1287 (1987) (finding General Counsel not foreclosed from seeking a specific kind of remedy by virtue of assurances made by General Counsel in the course of discussions over a non-Board settlement of underlying unfair labor practice allegations). The General Counsel therefore was not estopped from litigating the allegations that DMC violated Section 8(a)(1) by its conduct upon entering the non-Board settlement agreement and by its postsettlement conduct, and we reverse the judge's estoppel finding. See also *Wallace Corp. v. NLRB,* 323 U.S. 248, 253-255 (1944) ("We cannot, by incorporating the judicial conception of estoppel into its procedures, render the Board powerless to prevent an obvious frustration of the Act's purposes"; approving Board's practice of going behind settlement agreement where it failed to accomplish its purpose or where there was a subsequent unfair labor practice).

See also, *KFMB Stations,* 343 NLRB 748, 748, fn. 3 (2004); and *Quinn Co.,* 273 NLRB 795, 799 (1984).

In the instant case, Pirrone filed a charge against Local 324 on April 25, for causing his termination on that date by Selinsky. Union counsel Bachelder was apprised of the charge on April 30. She testified she apprised Union officials that they could not affect an employee or member's employment because of an internal union rule, that "You can't run them off the job." Upon approval of the consulted Union officials, Bachelder testified she contacted Selinsky and asked if they would put Pirrone back to work. When Selinsky agreed, Bachelder testified she then contacted Board Agent Jackson stating the Union would like to resolve the charge with Pirrone's reinstatement to Selinsky. Bachelder testified she informed Jackson that Pirrone

would still be subject to internal union charges. Bachelder admittedly had no conversation with Pirrone where she warned him of this consequence of the settlement. Bachelder testified that she had at least two conversations with Jackson about this consequence to Pirrone, wherein in the first conversation she told Jackson "you got to let this guy know we still don't think he's cleared in properly" to which Jackson purportedly replied, "all I care about is getting rid of the case." Bachelder testified during the second conversation she told Jackson to let Pirrone know the Union did not think he cleared in properly and they were going to take internal union action against him, to which Bachelder testified, "I remember my relief that he (Jackson) had said something and I don't know whether he said something and I don't know whether he said, I told him or he knows that." Pirrone on the other hand credibly denied any knowledge that the Union intended to take action against him at the time he withdrew his initial charge. In this regard, I found Pirrone to be a fairly bright individual and it is unlikely that he would have accepted reinstatement and no backpay knowing the Union intended to file charges against him.

Moreover, I note there is no contention here that Pirrone agreed to withdraw his charge with prejudice even by Bachelder's account. While there was correspondence between Bachelder and Jackson that the Union would pursue the matter internally as to whether Pirrone had cleared in, Jackson warned Bachelder that such conduct by the Union could bring about the filing of another unfair labor practice charge. Thus, Pirrone had not withdrawn his prior charge with prejudice and the Union was warned that future conduct would likely result in another charge. Here, Local 324 introduced evidence of these settlement discussions at trial over the objection of the General Counsel. I allowed the evidence in for reasons set forth on the record, but when the Charging Party sought to place into evidence Pirrone's version of the settlement discussions on rebuttal, Respondent's counsel objected and at that late stage of the trial sought to permission to subpoena Jackson. First, the case law set forth above makes Jackson's testimony irrelevant because this was a non-Board settlement and any statements made by the Board agent to the parties does not bind the Regional Director to that settlement. See, *Auto Bus, Inc., supra., and Dilling Mech. Contractors, Inc., supra.,* and the cases cited therein. Moreover, in these circumstances the Board agent, serving in a mediatory role, as matter of policy should not be subject to subpoena. Finally, the Union was represented by experienced counsel and should have been aware that the Board's Rules and Regulations at Section 102.118 requires that any party seeking to procure the testimony of any Board Agent or attorney there employed, must secure the authorization of the General Counsel. Since Respondent planned to put into evidence settlement discussions it should have made timely provision to secure the testimony of the Board Agent prior to the rebuttal stage of this proceeding noting that the charge was filed in 2013, and the complaint issued in 2014. Thus, I concluded Jackson's testimony was unnecessary and that Respondent's belated attempt to procure it was no more than an attempt to delay this proceeding. As to Bachelder's discomfiture in directly warning layman Pirrone prior to his withdrawing the initial unfair labor practice charge that the Union intended to file internal union charges against him, the Union officials experienced no such qualms when they visited unrepresented Pirrone at the job site and subsequently sent him correspondence initiating the charge, notifying him of the hearing, and then refusing his request to postpone it so that he had time to prepare. In any event I find for the reasons set forth below that the Union's conduct was closely related to and in fact a continuation of its prior acts encapsulated in the withdrawn charge, and that it would not effectuate the Act to defer to any non-Board settlement here.

2. Local 324 violated Section 8(b)(1)(A) and 8(b)(2) of the Act by causing Selinsky's April 25 layoff of Pirrone, and Section 8(b)(1)(A) of the Act by bringing Pirrone up on charges, causing him to quit, trying him on those charges, and fining Pirrone.

In *NLRB v Allis-Chalmers Mfg. Co,* 388 U.S. 175, 176-77, (1967), the Court found that a union which threatened and imposed fines, and brought suit for their collection, against members who crossed the union's picket line and went to work during an authorized strike against their employer did not violate Section 8(b)(1)(A) of the Act. The Court stated the strikes were approved in accord with the union's constitution after the members of each local voted by secret ballot to strike. The charges were heard by local trial committees in proceedings at which the charged members were represented by counsel. There was no claim of unfairness in the proceedings. The trials resulted in each charged member being found guilty and being fined in a sum from $20 to $100. The Court in upholding the union's right to fine the members in the circumstances there stated, "Integral to this federal labor policy has been the power in the chosen union to protect against erosion of its status under that policy through reasonable discipline of members who violate rules and regulations governing membership.[7] That power is particularly vital when the members engage in strikes." The court stated, "In the present case the procedures followed for calling the strikes and disciplining the recalcitrant members fully comported with these requirements, and were in every way fair and democratic. Whether s 8(b)(1)(A) proscribes arbitrary imposition of fines, or punishment for disobedience of a fiat of a union leader, are matters not presented by this case, and upon which we express no view." The court stated, "the repeated refrain throughout the debates on s 8(b)(1)(A) and other sections that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status." Id at 194-95.

In *NLRB v. Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO,* 391 US 418, 423-28 (1968), the Court affirmed the Board in finding that it was unfair labor practice for the union to expel an employee on the ground he had filed unfair labor practice charges with the Board without exhausting internal union remedies. The Court noted that, "Section 8(b)(1)(A) in its proviso[5] preserves to a union 'the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.'" However, the Court went on to state that Section 8(b)(1)(A), "assures a union freedom of self-regulation where its legitimate internal affairs are concerned. But where a union rule penalizes a member for filing an unfair labor practice charge with the Board other considerations of public policy come into play." Thus, the Court found that a union's ability to discipline its members under the Section 8(b)(1)(A) proviso was not unlimited but governed by concerns of public policy. The Board has similarly recognized that it is a violation of Section 8(b)(1)(A) of the Act for a union to discipline a member in retaliation for their filing an unfair labor practice charge. See, *Service Workers (Kaiser Foundation Health Plan),* 349 NLRB 753 (2007), and *Graphic Communications Local 22 (Rocky Mountain News),* 338 NLRB 130-31 (1982).

In *Scofield v. NLRB,* 394 U.S. 423, 428-31 (1969), the Court stated pertaining to the Section 8(b)(1)(A) proviso pertaining to union rules that:

> Although the Board's construction of the section emphasizes the sanction imposed, rather than the rule itself, and does not involve the Board in judging the fairness or wisdom of particular union rules, it has become clear that if the rule invades or frustrates

an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating s 8(b)(1).

***

Under this dual approach, s 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule. This view of the statute must be applied here.

***

In the case at hand, there is no showing in the record that the fines were unreasonable or the mere fiat of a union leader, or that the membership of petitioners in the union was involuntary. Moreover, the enforcement of the rule was not carried out through means unacceptable in themselves, such as violence or employer discrimination. It was enforced solely through the internal technique of union fines, collected by threat of expulsion or judicial action. The inquiry must therefore focus on the legitimacy of the union interest vindicated by the rule and the extent to which any policy of the Act may be violated by the union-imposed production ceiling.

The Court found the rule in *Scofield* did not discriminate against members stating all members of the bargaining unit have the same contractual rights, and the union accorded employees uniform treatment. The Court noted if a member chose not to limit their production as required by the union's rule then he can leave the union and obtain whatever benefits and advancement may occur through the extra piece rate work. The Court noted, "That the choice to remain a member results in differences between union members and other employees raises no serious issue under s 8(b)(2) and s 8(a) (3) of the Act, because the union has not induced the employer to discriminate against the member but has merely forbidden the member to take advantage of benefits which the employer stands willing to confer. Those sections are not aimed at completely internal union discipline of union members, even though the discipline may result in the member's refusal to accept work offered by the employer. *Allis-Chalmers* makes this quite clear. The union rule here left the collective bargaining process unimpaired, breached no collective contract, required no pay for unperformed services, induced no discrimination by the employer against any class of employees, and represents no dereliction by the union of its duty of fair representation. In light of this, and the acceptable manner in which the rule was enforced, vindicating a legitimate union interest, it is impossible to say that it contravened any policy of the Act." Id 434-36.

The Board has held there is an interrelationship between Section 8(b)(2) and Section 8(b)(1)(A) of the Act in that a union violates both Section 8(b)(2) and 8(b)(1)(A) when it attempts to cause or causes an employer to fire or lay off employees for reasons other than their failure to pay dues and fees under a valid union-security clause, including attempts to have employers fire travelers because of their status as travelers. This is so even though Section 8(b)(2) is the only Section of the Act that explicitly prohibits such conduct. In *R-M Framers, Inc.,* 207 NLRB 36, 43 (1973), the judge, with Board approval, found a causal link between statement from a union official and the unlawful discharge of an employee even though there was no direct request for such discharge. There the judge stated:

This Board has consistently held, with judicial concurrence, that a labor organization need not make a specific demand upon some concerned employer to terminate a worker for illegal reasons before Section 8(b)(1)(A) and (2) violations may be found. See *Local Union No. 742, United Brotherhood of Carpenters and Joiners of America (J. L. Simmons Company, Inc.)*, 157 NLRB 451, 453-454, enfd. 377 F.2d 929 (C.A.D.C., 1967); *Local Union No. 592, United Brotherhood of Carpenters and Joiners of America,*

> *AFL-CIO (Brunswick Corporation)*, 135 NLRB 999, 1000-02; *Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, Local Union No. 193 (Southeastern Plate Glass Company)*, 129 NLRB 412, 413. Compare *Local Union No. 230, Sheetmetal Workers International Association, AFL-CIO (Twin City Roofing)*, 165 NLRB 151, 152-154, 154-155, 156, in this connection. I find these precedents germane; further, upon this record, I find their principle dispositive.[15]

Along these lines, the Board has held that unlawful interference by a union in an employee's employment need not be shown by an express request, demand, or threat. It is sufficient if any pressure or inducement by the union is used to influence an employer in terms of an employee's employment relationship with that employer. See, *Local 334, Laborers International Union of North America (Kvaerner Songer, Inc.),* 335 NLRB 597, 600 (2001); *Carpenters Local 1456 (Underpinning Constructors),* 306 NLRB 492 (1992), enfd. 993 F.2d 1533 (2nd Cir. 1993); *Stage Employees IASTE Local 665 (Columbia Picture)* 268 NLRB 570, 572 (1984), enfd. 751 F.2d 390 (9th Cir. 1984); *Electrical Workers Local 441 (Otto K. Oleson Electronics),* 221 NLRB 214 (1975), enfd. 562 F.2d 55 (9th Cir. 1977); and *Northwestern Montana District Council of Carpenters (Glacier Park Co.),* 126 NLRB 889, 897 (1960).

More particularly, a union that operates a non-exclusive hiring hall, such as Local 324 here, will be found to violate Section 8(b)(1)(A) and (2) when it interferes with an individual's employment because that individual was not referred for employment by the union; or because of the individual's membership status. See, *Kvaerner Songer, Inc.,* 343 NLRB 1343, 1346 (2004). Similarly, in *Carpenters Local 2369 (Tri-State Ohbayashi),* 287 NLRB 760, 762 (1987), enfd. 878 F.2d 1439 (9th Cir. 1989), the Board stated:

> It is settled that, absent an exclusive hiring hall arrangement, a union violates Sections 8(b)(2) and 8(b)(1)(A) if it interferes or attempts to interfere with an individual's employment for union-related reasons.[11] Therefore, if the issue of "direct interference" by the Respondent with Westberg's employment with TSO was fully and fairly litigated, and if a preponderance of the evidence establishes such interference, we will affirm the judge's finding that the Respondent violated the Act.
>
> To begin with, we agree with the judge that the evidence establishes that the Respondent, through the Sullivans, attempted to prevent and did prevent Westberg's employment with TSO. The initial--and vital--step in this operation was to confirm in Westberg's mind the mistaken impression that he had to have a dispatch in order to work at the ETS-9 project, because if Westberg had ever discovered that no dispatch was necessary, the Respondent's remaining efforts would have been futile. Therefore, although there was no hiring hall arrangement between TSO and the Respondent concerning ETS-9, the Respondent acted as if its clearing Westberg for hire on that project was required and without such clearance he could not be hired.

The Board then went on to cite other actions by the respondent union, and stated, "Like the judge, we have no difficulty concluding that the Respondent's course of conduct constituted an attempt to persuade TSO not to hire Westberg, and that the attempt succeeded." The Board stated, "Respondent's actions were the efforts by William Sullivan, including asking for a referral

[15] In this regard, the Board has held Section 8(b)(1)(A), in the context of this case, is a derivative violation of Section 8(b(2) of the Act. See, *Postal Workers,* 350 NLRB 219, 222 (2007); *Jacoby v. NLRB*, 233 F.3d 611, 618 (D.C. Cir. 2000); *NLRB v. Iron Workers Union, Local 433*, 767 F.2d 1438, 1440 (9th Cir. 1985); and *H.C. Macaulay Foundry Co.,* 223 NLRB 815, 821, fn. 8 (1976).

letter, to confirm in the minds of Westberg and TSO officials the erroneous impression that Westberg needed a dispatch to work on ETS-9. It is immaterial that no explicit threat or demand was voiced; the Sullivans' actions and their thinly veiled hints of the Respondent's displeasure were sufficient to influence TSO not to employ Westberg as it had planned. We also find that the issue of the Respondent's 'direct interference' with Westberg's employment with TSO was fully and fairly litigated. Although, as we have noted, the amended complaint does not specifically allege such direct interference, it does allege that the Respondent caused TSO not to hire Westberg not by merely *failing* to dispatch him but also by *refusing* to do so." The Board went on to describe why the issue was fully litigated, and stated, "Finally, both parties addressed the issue of the Respondent's "direct interference" with Westberg's employment in their briefs to the judge." The Board stated, "the judge properly found that the Respondent violated Section 8(b)(2) and (1)(A) by prevailing on officials of TSO to change their plans and not to hire Westberg because he was not one of the Respondent's members." Id. at 762-763.[16]

The Board went on to state in *Carpenters Local 2396* at 764 that:

> The complaint alleged that the Respondent violated Section 8(b)(1)(A) by maintaining agreements with TSO that contained the following provision: "Whenever the employer [TSO] requires men covered by this Agreement on any job, the employer shall give preference in hiring to Union members from the local union having jurisdiction who are qualified to perform the work." That provision was part of the underlying master area labor agreement which was adopted by reference in the Respondent's contracts with TSO covering work at projects ETS-3D and ETS-6.
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> ***
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> We find merit in the General Counsel's exceptions. The provision in question plainly requires signatory employers to give preference in hiring based on membership or nonmembership in labor organizations, and consequently restrains and coerces employees in the exercise of their Section 7 rights. The quoted provision is unlawful on its face. Accordingly, we find that by entering into and maintaining an agreement containing such a provision, the Respondent has violated Section 8(b)(1)(A) of the Act, and we shall order Respondent to cease and desist from maintaining any such provision.[18][17]

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[16] The facts in Carpenters Local 2396, are similar to those herein in that the union there led the employer to believe the employee needed a referral by the union to work for the employer, but refused to provide that referral. The union there took these actions although it knew it did not have an agreement with that employer so no referral was necessary. Here, Everly caused Pirrone's termination from Selinsky on April 25, and union representatives continued to repeatedly assert that Pirrone had not cleared in through May 8, although Local 324 according to their own proof had no agreement with Selinsky until May 9.

[17] In the current case, the General Counsel does not allege that the maintenance of or enforcement of Article XV, Section 3(a) of the international union's constitution which reads in part, "Members of one Local Union shall not seek employment, be employed, or remain at work at the craft within the territorial jurisdiction of another Local without consent of such other Local Union,…" is violative of the Act. It is clear by the testimony of Page, Boone, and Everly that Respondent's officials use this provision of the constitution to discriminate against travelers concerning employment opportunities in favor of saving those opportunities for Local 324 members. If this provision was found in a collective-bargaining agreement, as set forth above, it would be found to violate the Act. Thus, national labor policy as defined by the case law and the intent of the statute itself prohibits a union to cause an employer to give preference in its hiring decisions based on membership and non-membership in a labor organization. To allow a

The Board has in fact long recognized that a union violates Section 8(b)(1)(A) of the Act when it restrains employees or prevents them from seeking or maintaining employment for discriminatory purposes even when the it does not accomplish its goals by contacting an employer. In *Sachs Electric Co.,* 248 NLRB 669 (1980), enfd. in relevant part 668 F.2d 991 (8th Cir. 1982), the Board found the respondent union violated Section 8(b)(1)(A) of the Act when a steward and a business manager requested travelers to quit who had been referred out of the union's hiring hall in favor of unemployed members of the respondent union. The Board stated, "travelers asked to quit under circumstances such as those present in the instant case undoubtedly are aware that the 'requests' come from union officials who, by virtue of their responsibilities in administering the hiring hall, control, and will continue to control, the travelers' livelihoods within the hiring hall's jurisdiction." The Board ordered a make whole remedy for travelers who honored the request and quit. In *Plumbers Local 392 (Oberle-Jorde Co.),* 273 NLRB 786, 793 (1984), threats to travelers by a steward that if they refused to leave a job in favor of local members that they would be sanctioned by the hall, they would never work out of the local again, and the union would not be responsible for what happened if they showed up on the job, thereby causing them to abandon their employment were held violative of Section 8(b)(1)(A), warranting a make whole remedy for those failed to show up for work and were terminated. Similarly, in *Electrical Workers Local 357 (Newtron Heat Trace, Inc.),* 343 NLRB 1486, 1488 (2004), rev. denied 224 Fed. Appx. 727 (9th Cir., 2007), cert. denied 552 U.S. 91 (2007), rehearing denied 552 U.S. 1133 (2008), the Board affirmed the judge's findings that the respondent union violated Section 8(b)(1)(A) of the Act, by maintaining at its hiring hall a side-list practice and procedure whereby travelers surrendered employment referral opportunities to permit dispatch of Local 357 members, and applying said side list to three named travelers; threatening travelers with denial of membership in Local 357 and loss of job opportunities because they refused to surrender job referrals to local members; and restraining and coercing travelers into surrendering job referrals to members of Local 357 by participating in, acquiescing

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union to circumvent that policy and create the same discriminatory effect through the use of its own constitution under the guise that it is an internal union matter undercuts the purpose of Section 8(b)(2) of the Act, condones discrimination based on union membership, and appears to be an affront to national labor policy. In fact, that is what happened here, conceding that it erred in causing the employer to discriminate the Union sought to undercut Section 8(b)(2) of the Act, by trying and fining Pirrone because he had the temerity to accept employment to the possible disadvantage of Local 324 members; and because he had filed an unfair labor practice charge against Local 324 to protect his right to work. This scenario is different than what the Court envisioned in *Scofield* which noted there that there was no discrimination based on union membership. Moreover, the rule in *Scofield* did not cause employees to forfeit their jobs, rather it just required them not to exceed a production ceiling. The Court also noted they could resign their membership and escape the rule. That is not so here, the rule in the Union's constitution allows and in fact encourages local union officials to discriminate based on union membership, and since this is a large national union, resigning one's membership could possibly significantly curtail one's employment opportunities nationwide so in reality escaping the rule by resignation may make sense in the abstract, the logic does not necessarily apply to this workplace reality. To suggest otherwise, ignores how quickly Selinsky succumbed to Local 324's demand to terminate Pirrone and hire "local guy" Lambert. In spite of Mike Chapman's testimony that he did not want to do so because Pirrone was a good employee. Thus, Selinsky, an employer, did not want to tangle with the Union, and an individual employee or member can even less afford to do the same. Thus, had the rule been at issue before me, I would likely to have found its maintenance and enforcement in the circumstances here were violative of Section 8(b)(1)(A) of the Act. For the reasons herein stated, I do not need to make such a finding to find the Respondent violated the Act, as it pertains to Pirrone and as alleged in the complaint.

in, or failing to take any action against members of Local 357 or other individuals who threatened bodily harm and disparaged travelers who accepted job referrals. There a make who remedy was provided against the union in favor of three travelers. In *Bricklayers Local No. 1 (Mason Contractors Assn.),* 308 NLRB 350 (1992), a union was found to violate Section 8(b)(1)(A) of the Act by its refusal to issue a work permit to a nonmember which was required as condition of employment in order to give employment preference to existing members.

In *Elec. Workers Ibew Local 1579,* 316 NLRB 710, 711-12 (1995), the Board stated:

> We agree with the judge that, under the circumstances of this case, the Respondent violated Section 8(b)(1)(A) by imposing the fine on Stripling based on his employment at Austin.[4] Although a union may, of course, lawfully maintain and enforce rules prohibiting members from working for nonunion employers, we find in agreement with the judge that the Respondent violated Section 8(b)(1)(A) of the Act by enforcing the rule in an unreasonable manner against Stripling.
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> The legal standard for the enforcement of internal union rules is well settled. In *Scofield v. NLRB*, supra, the Supreme Court held that Section 8(b)(1)(A) does not bar a union's enforcement of internal rules which: (1) are properly adopted; (2) reflect a legitimate union interest; (3) impair no policy imbedded in the labor laws; and (4) are reasonably enforced against a union member who is free to leave the union and escape the rule. The only *Scofield* requirement at issue in this case is whether the rule was "reasonably enforced."[5] For the reasons which follow, we agree with the judge that it was not.
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> In this regard, it is undisputed that the Respondent imposed the fine solely on Stripling, a traveler, and did not similarly fine Murphey and McDaniel, members of the Respondent, who also worked for Austin. Moreover, we note that the Respondent failed to institute disciplinary proceedings against Stripling until after its members had been laid off by Austin, even though the credited testimony establishes that it was aware of Stripling's employment as early as June 1991.[6] Thus, the Respondent violated its own constitutional limitations period by failing to charge Stripling within 60 days of its knowledge of his alleged violation of its rules.
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> The Respondent asserts that its more favorable treatment of its own members is justified because they were salts referred to the Austin site for organizing purposes. We agree with the judge that this explanation is pretextual. Thus, the credited testimony discloses no evidence that either Murphey or McDaniel ever engaged in any organizing activity at Austin, or that the Respondent ever followed up on its initial request that they do so or inquired about the progress of their activities.[7] Further, the Respondent concedes that 99 percent of those individuals it refers to nonunion employers as salts are its members. Under these circumstances, we cannot avoid the inference that the salt program is a privilege of local membership, which the Respondent grants to its members, but not to travelers who are members of other local unions of the IBEW, and thus cannot serve as a legitimate nondiscriminatory reason for its actions regarding Stripling.

In the current case, Pirrone, a member of Local 18 located in Ohio, received a call from Mike Chapman offering him a position as a crane operator for Selinsky working at a jobsite in Michigan, which was within the jurisdiction of Local 324. Pirrone, who had worked in Michigan many times in the past called Local 324 on April 2, and asked to speak to the BA to clear in. The call was transferred to a man, and Pirrone told him Pirrone's name, the job he was working, that he was going to be running a crane which had not arrived, the name of the company, and the estimated length of the job. Pirrone was told to call back when the crane arrived. Pirrone

called Local 324 again on the morning of April 8, the day the crane arrived, and he asked to speak to the BA. Pirrone was transferred by a receptionist to a man, and he gave the man the same information he had given during the prior phone call. In addition, Pirrone told the man he was from Local 18, and specified the type of crane he was going to be operating. Pirrone called Local 324 again the afternoon of April 8, and asked to speak to the BA, to determine the contractual wage rates for the site at which Pirrone was working. Pirrone gave the man who came to the phone, Pirrone's name, where he was working, the length of time he was expected to work, what he was doing and again told the man he was a Local 18 member. In response, Pirrone was told the wage rate. Pirrone called Local 324 again on the afternoon of April 8, and asked for a reciprocity form. He was transferred by the receptionist to Administrative Assistant Haley, who researched for him as to whether he had a current reciprocity form on file. Haley located Pirrone's prior filing and told him his form was out of date. Per Pirrone's request, Haley emailed Pirrone a blank reciprocity form on April 8, which Pirrone filled out and emailed back to Haley that night. Pirrone stated on the form he emailed to Haley that he was working for Selinsky at the Monroe Steel Mill, he gave an estimate of the length of the job, and he stated Local 18 was his home local. Pirrone phoned Haley the morning of April 9, confirmed she had received the form and asked her about the witness line, to which Haley stated she would have a BA sign it. The form in fact had a line for a witness signature, specifying that the Business Representative also print their name. Pirrone later received a benefit summary from Local 324's Vacation and Holiday Fund showing vacation funds and dues contributions had been deducted for him in April, May and June.

Respondent President and Business Manager Page testified if a traveler wants to work in Local 324's jurisdiction they must call Local 324 to clear in. Page testified clearing in always involves the dispatcher who maintains Local 324's out of work list. Page testified the dispatcher is also a BA, but a regular field BA is not a dispatcher. Page testified that no BA other than the dispatcher is assigned to work at the union hall. Page testified in addition to the out of work list, the dispatcher keeps notes as to who calls the hall and the purpose of their call. Page, BA Everly, a former dispatcher, and Local 324 Vice President and BA Boone all testified if a traveler calls the hall and states they want to clear in the receptionist would direct the call to the dispatcher. Page and Everly testified that when a traveler calls to clear in they would provide the dispatcher with the type of information, Pirrone described above that he gave the BA when he called to clear in. Page testified when someone is cleared in they are cleared in to operate the specified piece of equipment for as long as it remains on the site. Everly testified Saunders was the dispatcher in April and May, during the events in question. The testimony of Everly reveals Saunders was removed from his job as dispatcher in the summer of 2013, and the testimony of Everly and Boone reveals that for reasons unknown to them, Saunders was laid off by the Union altogether within months of the unfair labor practice trial. Saunders was not called as a witness. Boone testified the dispatcher keeps records of who called to clear in, but Respondent's counsel represented the Union could not locate the records for the time period in April in which Pirrone testified he called, stating that Respondent only retained those records going back to the middle of May 2013.

Thus, Pirrone's credited testimony, as verified by his phone records, reveals he called Local 324 on April 2, and twice on April 8, spoke to the resident BA who, from the testimony of Page, Boone, and Everly I have concluded was Saunders, who was also the Union's dispatcher. On those three occasions, Pirrone provided Saunders all the information Respondent's witnesses testified was needed for a traveler to clear in. Moreover, on April 8, Pirrone emailed in a reciprocity form which also contained all of the information which required a signature of a business representative, and to which Haley confirmed to Pirrone that she would have a BA sign it. Therefore, noting Respondent had no written clear in procedure; I find that Pirrone more

than met the word of mouth clear in procedures described by Respondent's officials. That, along Respondent's failure to maintain Saunders records concerning his contacts at that time in the face of two unfair labor practice charges serves to confirm my conclusion that Pirrone had cleared in, and despite their claims to the contrary, Respondent's officials knew he had done so.

Pirrone worked without incident until April 22, which was 21 days after he had cleared in on April 2, and which he confirmed on April 8. Around that time, former Local 324 BA Lambert got wind of Pirrone, a traveler's, presence at Selinsky working at a job Lambert coveted. In this regard, Everly testified Lambert called Everly and told him to check if Local 324 had sent anyone out to Selinsky's site. Everly claimed he checked and then informed Lambert that Local 324 had not sent anyone. Similarly, Mike Chapman testified that Lambert phoned him two or three times about getting a job at Selinsky, and Mike Chapman told him that he would hire Lambert when he needed a second crane operator.

Everly testified at Lambert's urging he phoned Brian Chapman, a Selinsky official and son of Mike Chapman. Everly, on review of his phone records testified the call took place on April 22. Everly testified that during the call, he asked Brian Chapman to have Pirrone call Everly. He testified that Pirrone phoned Everly that same day. Everly testified during the call Pirrone, upon being questioned by Everly, informed Everly that Pirrone was a member of Local 18. Everly testified he asked Pirrone if he had cleared in to which Pirrone said yes. Everly testified Pirrone in describing how he had cleared in said he had a reciprocity form, and that when Everly asked who Pirrone had spoken to, Pirrone said he could not recall her name. Everly testified he told Pirrone that if he had spoken to one of the "girls" at the office, she could not clear Pirrone in, "so if he didn't talk to dispatch." When asked what Pirrone's response was to Everly's statement that "the girls couldn't clear him in" Everly testified "I don't know. I don't remember." As per Everly's testimony, his phone log for April 22, shows he had three conversations with Pirrone on April 22 totaling 23 minutes in length.

Everly testified he called Saunders the dispatcher to investigate Pirrone's assertion that he had cleared in to which Everly learned no one had cleared in for Selinsky. He testified he also learned that Local 324 did not even have an agreement with Selinsky for them to work in Michigan. Everly testified he could not clear Pirrone in because there was no agreement with Selinsky. He testified, "I couldn't clear someone in to work for a non-signatory contractor." Everly also testified that he could not bar Pirrone from the job because there was no contract with Local 324. He then testified he also told Pirrone that he had been on the job for three weeks and he was not cleared in. Everly testified he spoke to one of the Chapman's and informed them there was no agreement, and asked if they could get an agreement signed.

Despite having said, that Pirrone could not clear in for Selinsky, and that he could not bar Pirrone from the job because there was no contract with Selinsky, Everly also testified he had further conversations with Mr. Chapman about Selinsky not having an agreement with Local 324, and that his operator came from Local 18 and was not cleared in. Everly testified, "I mean, I was just telling -- kind of just talking to him about, we need to -- there's some work to do here." In fact, Mike Chapman's credited testimony reveals that Everly's entreaties to Mike Chapman were more direct that Everly was willing to admit. Mike Chapman testified he had conversations about Pirrone with a Local 324 BA whose name he did not recall. I have concluded this BA was Everly since his testimony reveals he was involved, it was his territory, and Boone who appeared to be Everly's supervisor testified he was not involved in the matter at this point in time. Mike Chapman testified he discussed with the BA, in reference to Pirrone, "that he didn't clear in, and he wanted to switch him with another guy." Mike Chapman testified the BA identified the person they wanted to switch Pirrone with as Lambert, stating that Lambert was "a

local guy." Mike Chapman testified he talked with the BA a few times, and that "I remember a couple of phone calls. And then I had to lay him off." Mike Chapman testified that as a result of the calls he laid off Pirrone. When asked why he laid off Pirrone, Mike Chapman testified in reference to Local 324, "they wanted me to bring in Lambert, Bob Lambert." Mike Chapman testified the BA told him that Pirrone was not cleared in and he had to lay him off. Pirrone was laid off on April 25. Mike Chapman testified that after Pirrone's layoff, Mike Chapman hired Lambert, a former Local 324 BA, as a replacement. He testified the reason he hired Lambert was that was who the Union sent out.

Pirrone testified around the last week of April, he received a call on his cell phone and someone asked if this was Gomez, Pirrone's nickname. Pirrone said yes and the person stated this is Matt (Everly) from Local 324. Pirrone testified that Everly told him that he did not clear in right and that Pirrone needed to quit working at Selinsky immediately. Pirrone testified Everly did not say he was a BA. Pirrone told Everly that Pirrone did clear in correctly, and that he could prove it. Pirrone testified he was referring to his phone records and the forms he had filled out in terms of proving he cleared in. Pirrone testified Everly responded, "We'll go from here."[18] Pirrone testified that Brian Chapman told Pirrone the week this was going on that "the Union had contacted him to lay me off, …." Pirrone testified that, "He said that they were going to force them to lay me off to hire one of their guys -- because I didn't clear in." Pirrone credibly testified, on April 25, Mike Chapman came up to Pirrone and said he had to lay him off. Pirrone asked why, and Mike Chapman said the Union was strong-arming him and forced them into laying Pirrone off and Selinsky did not want to deal with it. Mike Chapman told Pirrone he had to hire Lambert and Lambert was coming to take Pirrone's job. Pirrone filed an unfair labor practice charge against Local 324 on April 25, in case number 7-CB-103730.

Thus, the credited testimony of Mike Chapman and Pirrone, confirmed somewhat by the admissions of Everly, reveal that BA Everly directly interfered with Pirrone's employment at Selinsky, through multiple phone calls to Mike and Brian Chapman insisting that they layoff Pirrone because he was a traveler who had not cleared in, and because Everly wanted Selinsky to terminate Pirrone, and hire in his place Local 324 member and former BA Lambert. Everly achieved these goals when Mike Chapman laid off Pirrone on April 25, and hired Lambert. While Everly testified he called dispatcher Saunders and was told Pirrone had not cleared in, I do not credit this testimony. First, Pirrone had on April 2, and again on April 8, phoned the hall and talked to the BA, who the record warrants a conclusion to be Saunders. Thus, I have concluded Pirrone did clear in, and Saunders had no reason to inform Everly to the contrary. Second, Everly testified Saunders was replaced as a dispatcher in the summer of 2013, which would have been shortly after the filing of Pirrone's unfair labor practice charges, and that Saunders was let go altogether within months before the unfair labor practice trial in January 2016, for reasons unknown to Respondent's witnesses. That, along with Respondent's failure to retain Saunders' dispatcher log records serves to confirm my conclusion that those records, as well as Saunders himself would not have supported Everly's version of events.

In sum, Pirrone's credible testimony, along with his phone records, confirm that he spoke to the resident BA dispatcher Saunders to clear in as required, and I do not credit Everly's claim that he was told something to the contrary. Moreover, Everly claims Saunders told him that Local 324 did not have a contract with Selinsky so Everly could not have cleared Pirrone in, or bar him from working there. Yet, there is no contention he ever informed Pirrone of this tidbit other than insisting to Pirrone he had not cleared in, and to the Chapman's that Pirrone had not

[18] While there is a dispute between Everly and Pirrone's recollections as to who placed the initial call between them, I have credited Pirrone as to the content of the call.

cleared in and they should remove him from the job. Any feigned concern Everly had about Local 324 not having an agreement with Selinsky at the time, was undercut by Everly's insistence that Selinsky replace Pirrone with Local 324 member Lambert and the Employer's compliance with said request. While Everly and Mike Chapman testified Selinsky was apprised and requested to sign the Local 324 agreement, the testimony of when this request was made was unclear from Mike Chapman's recollection, and unreliable from Everly's claims for the reasons stated. In this regard, Lambert was referred to replace Pirrone before any agreement was signed by Selinsky, and benefits and dues were deducted for Pirrone for his work in April although there was no agreement in place until May 9. I also do not find that Pirrone told Everly he had cleared in and the only support he referenced was talking to Haley concerning the reciprocity form. Neither Pirrone nor Haley testified Pirrone contacted her about clearing in, and in fact Pirrone spoke to a BA on three occasions about clearing in. Everly's phone records reveals he had a minimum of three pretty lengthy phone calls with Pirrone, and I do not credit his claim that the only explanation Pirrone gave of his activities for clearing in was Pirrone's talking to Haley. Rather, I find Respondent's witnesses Everly, Boone, and Bachelder seized on Pirrone's positive act of obtaining the reciprocity form as a pretext for claiming Pirrone did not clear in properly. To the contrary, the record reveals Pirrone called the hall several times, spoke to resident BA Saunders, who was also the dispatcher, and gave Saunders the information necessary for Pirrone to clear in. Pirrone's first call to the hall was on April 2, and he repeated providing the required information to the hall on April 8. Pirrone had cleared in and worked without incident until Lambert coveted Pirrone's job, and complained that a traveler had the position rather than Lambert. Everly, acting on Lambert's complaints, interceded with Selinsky and had Pirrone removed from the job and replaced by Lambert, using the pretext that Pirrone had not cleared in.

Everly directly interfered with Pirrone's employment when he demanded that Mike Chapman terminate Pirrone and hire Lambert. Everly's demand was based on his desire to cause discrimination based on local membership, and was for reasons other than Pirrone's non-payment of dues, and therefore Local 324 violated Section 8(b)(2) and 8(b)(1)(A) of the Act when it caused Selinsky to terminate Pirrone on April 25. See, *R-M Framers, Inc.,* 207 NLRB 36, 43 (1973); *Local 334, Laborers International Union of North America (Kvaerner Songer, Inc.),* 335 NLRB 597, 600 (2001); *Carpenters Local 1456 (Underpinning Constructors),* 306 NLRB 492 (1992), enfd. 993 F.2d 1533 (2nd Cir. 1993); *Stage Employees IASTE Local 665 (Columbia Picture)* 268 NLRB 570, 572 (1984), enfd. 751 F.2d 390 (9th Cir. 1984); *Electrical Workers Local 441 (Otto K. Oleson Electronics),* 221 NLRB 214 (1975), enfd. 562 F.2d 55 (9th Cir. 1977); and *Northwestern Montana District Council of Carpenters (Glacier Park Co.),* 126 NLRB 889, 897 (1960). In fact, Respondent was admittedly operating a non-exclusive hiring hall at the time of Everly's interference. See, *Kvaerner Songer, Inc.,* 343 NLRB 1343, 1346 (2004); and the nature of Everly's actions were compounded by the fact that Local 324 did not even have a collective-bargaining agreement with Selinsky at the time of Everly's demands to Mike Chapman to terminate Pirrone purportedly because he had not cleared in with the Union. See, *Carpenters Local 2369 (Tri-State Ohbayashi),* 287 NLRB 760, 762 (1987), enfd. 878 F.2d 1439 (9th Cir. 1989).

Pirrone filed his initial unfair labor practice charge against the Union on April 25. Local 324 Attorney Bachelder was informed of the charge on April 30. As per her testimony, Bachelder, in her discussions with union officials, was told about the clearing in rule. She testified she told Local 324 officials when you have an internal union rule or something in the constitution they could not affect an employee or member's employment status because of it, that, "You can't have them run off the job." She testified she explained the way to enforce an internal union rule is to bring them up on internal union charges if they are a member.

Bachelder testified, upon the Union's agreement, she contacted the Employer and asked if they would put Pirrone back to work because there was a misstep by the Union informing the Employer that Pirrone had not cleared in. Bachelder testified the Employer was agreeable so Bachelder contacted Board Agent Jackson stating they would like to resolve this by getting Pirrone back to work and to see if he was willing to do that. Bachelder testified she told Jackson that Pirrone would be subject to internal union charges stating, "I absolutely did."

Pirrone testified he submitted to Jackson the reciprocity form and emails he had with Haley, as well as Pirrone's phone records. Pirrone testified this was in response to Jackson asking him what proof he had relating to his clearing in. The relevant exhibits support Pirrone's testimony as they show that on May 1, Pirrone emailed to Jackson his April 8 email exchanges with Haley, along with a copy of the reciprocity form he had filled out. The record also contains of copy of Pirrone's cell phone records showing a phone call log from April 1 to 10, which contain a fax stamp showing they were faxed on May 1.

Bachelder engaged in email exchanges with Jackson on May 2. In the initial email submitted into evidence, Jackson informed Bachelder that Pirrone "will be withdrawing the charge, will not be seeking back pay and will be reporting to work on Monday." In her reply email, Bachelder thanked Jackson for his "assistance in resolving this." She also stated, "This is to confirm our conversations of the last few days in which I told you that the Union still does not believe that Pirrone cleared in according to internal Union rules and will handle that matter internally." Jackson responded, "Understood, but your client might want to take into consideration that another charge could be filed which may or may not include and 8(a)(4) allegation." Bachelder testified she had no conversation with Pirrone and she never told him the Union may file internal charges against him. She testified, during her conversations with Jackson, "I specifically recall several conversations in which I said to the agent, we still don't think he cleared in properly, and I asked the agent, I said, if you have evidence of it, show it to me and I'll tell my client to back off. The Board agent sent me what the evidence was that he was saying was clearing in, and I said, I've showed this to my client, and we still don't believe he's cleared in, and you need to let Mr. Pirrone know that." Bachelder testified that during her discussions with her client, "somebody asked me, when I was explaining how you enforce an internal union rule by bringing somebody up on charges, somebody asked me, can we still do that? And I said, yes, but let's get the ULP resolved first and then give Mr. Pirrone another chance to clear in, explain to him what he has to do, and if he doesn't clear in properly at that point, then you can bring him up on charges."

In terms of clearing in, Bachelder testified she had a vague understanding of the Union's procedures. Bachelder testified, "I knew that they had -- that the person had to get consent and that the only thing he had done was talk to somebody in the office." When asked what Pirrone failed to do concerning clearing in, Bachelder testified, "All we know was what he said was clearing in, which was the paperwork that they had sent me, and apparently was filling out a reciprocity form and talking to somebody in the office. I showed that to my client. My client said, no, that's not clearing in." When asked if she knew whether Pirrone had cleared in properly, Bachelder testified, "what I knew at that time is the client did not think what he had presented was clearing in properly." Bachelder testified "the procedure was to contact somebody about clearing in, not somebody in the office. That's all I knew." She clarified, not an office clerical. Bachelder testified the dispatcher worked in the office and "the dispatcher is a business agent, not an office clerical." Bachelder testified if someone calls the office and says he is calling to clear in, "they will refer him to the dispatcher. That's what I know now. This is not information that I had at the time." She testified, "What I knew then was what he said was clearing in, my client said was not."

Pirrone's cell phone records as tendered at the unfair labor practice trial show that on April 2 and April 8, he phoned Local 324 a total of six times. Pirrone's unfair labor practice charge contained his cell phone number. Bachelder testified the Board Agent gave her Pirrone's records supporting his contention that he had cleared in, and that she reviewed those records with the Union. There is a presumption here based on Pirrone and Bachelder's testimony that Bachelder was given Pirrone's phone logs. A simple verification with Haley would have revealed she had only spoken to Pirrone twice. Yet, Pirrone's multiple other phone calls to the Local did not raise any alarm bells to Respondent that he had in fact cleared in as he stated. Moreover, even if Bachelder was not given the phone logs, the reciprocity form Pirrone tendered required the signature of a business representative. Yet, apparently no inquiry was made by Bachelder or the Union officials to determine who if anyone had signed, or when they did so. Rather, Bachelder just repeated in her testimony that Pirrone had spoken to a clerical employee, and had not cleared in. The lack of investigation on her part, or that of her client, as well as the repetition of Everly's claim supports a conclusion of pretext in that Respondent's officials did not care whether Pirrone had cleared in, but just seized upon the reciprocity form to contend that he had not. For reasons set forth above, I have concluded that Pirrone's withdrawal of his initial unfair labor practice charge did not preclude the Region's reinstating those allegations if a new timely charge was filed. The Union was also warned by the Board Agent in writing that the filing of internal union charges against Pirrone might bring about another unfair labor practice. Therefore, the Union pursued Pirrone with internal union charges at their own risk of his reinstating his claims of the initial charge, and as I said earlier the prior non-Board settlement such as it was did not bar him from doing so, or the Region from acting upon his claims in the follow up charge. It should be noted that, during the time period in which Bachelder, through her testimony, was informing the Board agent that Pirrone had not cleared in that Local 324 did not even have a contract with Selinsky. Rather, Local 324 submitted evidence that Selinsky did not sign Local 324's agreement until May 9.

Pirrone received a call from Mike Chapman offering reinstatement at Selinsky and Pirrone returned to work on May 6. Pirrone testified that on May 8, Local 324 officials Boone and Everly came out to his job site. Pirrone credibly testified as follows: Boone handed Pirrone his card and said have your business agent for Local 18 get a hold of them to clear this matter up. Pirrone asked what matter up in that Local 324 given him his job back. Pirrone testified then, "Matt, the other business agent, spouted off, you didn't clear in right." Pirrone testified, "I said, whatever. And I went back to work." Pirrone also testified that during the exchange he stated, "You gave me my job back. Why do I -- I don't need to call anybody. You reinstated me. You gave me my job back. You called me up and said I will reinstate you, drop your charge. That's the same thing as clearing in. You cleared me back to come to work. So why would I call anybody else? And then Matt spouted off, you didn't clear in right. And they left."

Everly testified Bachelder told him to explain the proper way to clear in to Pirrone and if he chose not to, or did not get clearance and continued to work the Union could press internal charges. Everly testified, after Pirrone was hired back, Everly went with Boone to talk with Pirrone at the Gerdau jobsite. Everly testified the purpose of the visit was to let Pirrone know there was a proper way to call and get clearance to work. Everly testified that they wanted Pirrone to call the dispatcher. Everly testified he did not check to see if Pirrone had filed a current reciprocity agreement with Local 324. Everly testified concerning a reciprocity form, Pirrone "told me he had it sent to him. And if it's not signed, you know, it has to be signed by a business agent." However, Everly testified, "No, we didn't refuse to sign it." Everly testified a BA could have signed the reciprocity form once it is sent in, and that Pirrone did not have to be there for a BA to sign it. Everly testified as of the date of the unfair labor practice trial he never

checked if the Union had a reciprocity form for Pirrone stating, "Well, I know that they must have sent it in because he had contributions sent in, in his name."

Everly testified when they went to the job to visit Pirrone, Boone did the talking. Everly testified he did not speak. Everly testified Boone said, "no one's telling you, you need to leave. No one's telling you anything. You need to call and try and gain clearance." When asked if Pirrone called in if they would have refused him clearance, Everly testified, "I don't know. I don't know what would happen. But the -- he never called in." Everly testified Everly never looked to see if there were people on the out of work list in April or May 2013, stating, "I didn't, no. I mean, I just called to see if there was anyone tried to clear in. I didn't personally look on the list." Everly testified he did not know if Lambert was on the list, and he did not check to see if Lambert's name was on there. Everly testified the Union fined Pirrone when he returned to work because he did not call the dispatcher. Everly testified when he spoke to Pirrone around May 6, he had also not looked at the out of work list. Everly testified when he had asked Selinsky to layoff Pirrone in April it was because Pirrone did not clear in. He testified it had nothing to do with the out work list. Of course, Everly left out that when he asked Mike Chapman to layoff Pirrone in April, he also insisted that Chapman hire former BA Lambert, whether or not Lambert was on the out of work list at the time.

Boone testified he was aware of Pirrone returning to work pursuant to an agreement with Local 324. Boone testified he went to Pirrone's jobsite in early May and had a conversation with Pirrone. Boone testified he was not under instructions to go to the site and talk to Pirrone. He testified, "No. I just wanted to make sure that he was properly instructed on what he needed to do and the consequences of not clearing in properly. That's simply what I did." However, Bachelder and Everly testified she had given Everly instructions to inform Pirrone that he had not cleared in properly and that he needed to clear in. Boone, who was accompanied to the site by Everly, is clearly not credible as to this aspect of his testimony.

Boone testified that when he and Everly visited Pirrone's site, at that point Pirrone had not cleared in, so Boone went to the site to talk to Pirrone and explain to him that he had not cleared in properly; that he needed to contact dispatch; and if he did not do it properly charges could be brought against him and he could be fined with the fines being the responsibility of his home local. Boone testified Pirrone did not say a lot. Boone testified that he was very clear to Pirrone that they were not there to tell him to leave the job site, nor did they speak to Selinsky. Boone testified Pirrone did not properly clear in both times when he went to work for Selinsky that is when Pirrone first started, and again when he was reinstated. Boone testified the internal union charge was filed against Pirrone because he failed to clear the second time he went to work. When asked if Pirrone said he had cleared in, Boone testified Pirrone said, "he had talked to a girl in the office, which is not clearing in." Boone testified when Pirrone told him that he talked to a woman, Boone understood it to be Haley, who works in the office in the dues section. Boone admitted when Pirrone said he talked to a girl in the office Pirrone could have said he spoke to her to get a reciprocity form, and that Pirrone did not say he called the girl in the office to clear in. Boone testified he told Pirrone talking to the woman in the office was not clearing in and he had to talk the dispatcher. Thus, Boone incredibly claimed, after all that had gone on, the only explanation that Pirrone gave of his clearing in, was basically to repeat Everly and Bachelder's refrain over Pirrone's April 25 layoff that Pirrone stated he spoke to "a girl" in the office, which of course to Boone was not clearing in. Everly did not even contend that Pirrone made this statement during this May encounter. Rather, I find that Boone was just repeating in his testimony the party line of what he had been told was the basis for denying Pirrone's prior clearance. Since, the credited evidence reveals that Pirrone had spoken to a BA on multiple times to clear in, I do not credit Boone's testimony that Pirrone made the remarks about

speaking to "a girl" in the office to Boone. Rather, Boone's testimony, including his claim that he told Pirrone that they were not there to tell him to leave the site, and that they did not speak to Selinsky was just legalese incorporated into Boone's testimony to support Respondent's defense. Boone's testimony also comes in the face of his incredible claim that no one told him to visit Pirrone, yet he provided carefully scripted testimony as to the visit in line with Respondent's defense. I also do not credit Everly's claim that he remained mute during the encounter. In this regard, Everly was the prime motivator concerning Local 324's dealings with Pirrone. Thus, I have credited Pirrone's testimony in full to the encounter over the versions provided by Boone and Everly.

Boone testified since the Union had settled an unfair labor practice with Pirrone which placed him on the job, the office already knew Pirrone was working there when Boone visited the site. Boone testified Local 324 would not clear in Pirrone if they had men available to do Pirrone's job. Boone testified when he went out to see Pirrone, he did not know if someone was on the out of work list that was qualified to do Pirrone's job. When asked if he checked, Boone responded Everly was the agent. Boone testified Everly told Boone the first time Pirrone was trying to clear in that Lambert was on the out of work list. However, Everly testified he did not check the out of work list pertaining to Lambert, and neither Boone nor Everly claimed they knew someone was on the out of work at the time they visited Pirrone in May. Pirrone credibly placed Everly and Boone's visit on May 8, when they were telling him he had not cleared in. Yet, Respondent did not have a signed contract from Selinsky until May 9.

Local 324 President Page sent Pirrone a letter dated May 15, stating Page filed charges against Pirrone for violating Article XV of the international constitution. The letter accused Pirrone of obtaining employment within the jurisdiction of Local 324 without its consent. It stated Pirrone failed to follow clearing in procedures outlined in Article XV, including Section 3(a). Pirrone next received a letter dated May 22, 2013 from Scott, recording-corresponding secretary of Local 324. The letter, copied to Page and Local 324 Business Manager Stockwell, cited other provisions of the international constitution and notified Pirrone that he was to appear at a trial regarding charges levied against him by Page. The letter stated the trial was to be held at the regular general membership meeting on Wednesday, June 19, at 8:00 p.m. at a specified location in Grand Rapids.

Pirrone sent an email to Local 324, dated June 14, requesting the June 19 trial be postponed until the July union meeting scheduled in Detroit to allow him more time to prepare; and stating that he works until 5:30 p.m. and the hearing scheduled in Grand Rapids was 168 miles away. In the email, Pirrone stated that he had waited 2 weeks for a copy of Local 324's bylaws and constitution and he still had not received them. He stated he would call the hall again that night to request them as he needed them to prepare his case. Pirrone testified he received a response to the email, and they told him they would try and get him the constitution. He testified his request for a postponement was denied.

Pirrone testified he quit his employment with Selinsky on June 18 to hopefully facilitate settlement with the Union at the June 19 trial. He testified the fine the Union was going to impose on him caused him to resign. He testified Lambert had previously told him he was going to be fined as well as the amount of the fine. Pirrone testified that Lambert began to work for A.A. Boos Crane at the same jobsite as Pirrone around June 1.

Pirrone attended the June 19 hearing at the Grand Rapids location. Pirrone testified he arrived around 8 or 8:05 p.m., but was denied his admission to the room for a period of about 5 minutes. Pirrone testified then when he entered the room, everyone was already seated. The

BA's, Local Executive Board members and other officials were in front. Pirrone testified it appeared every BA in the local was there. He testified around 60 Local 324 members were also in attendance. Pirrone was the only person brought up on charges that day. Pirrone testified at the start of the hearing the charges were announced that Pirrone did not properly clear in.

Pirrone was asked to come up and plead his case. Pirrone had four folders made up of his phone records, and letters including the letter from Haley to show that he did clear in. Pirrone passed the folders out to the Local 324 members. Pirrone testified at the outset at the hearing, "I objected that I knew that I could not get a fair trial because I was already convicted, and I knew what you were going to fine me." He testified Lambert previously told him they were going to fine him up to $10,000. Pirrone's request to tape the hearing was denied. Pirrone testified that his testimony at the union trial "was everything that I did to clear in and that I thought I was cleared in properly. I did everything that I've done in the past." He testified he showed them his phone records at the trial and the reciprocity form he had discussed with Haley. Pirrone testified he also had a letter from Menchaca stating he had called the Union to inquire about wages pertaining to Pirrone. Pirrone testified Local 324 did not present any evidence in response. Pirrone testified Page stated, at the hearing, that the reason he filed the charge was to make sure his people have a job so they can feed their families and make their house payments. Pirrone testified that Page received a standing ovation for the remark, stating, "Gave him a standing ovation. How do you get a fair trial?"

In terms of a vote at the trial, Pirrone testified Financial Secretary Dombrow called for a head count four times as to whether Pirrone was guilty. Pirrone credibly testified that, "They stood up in the front with their arms crossed, looking at their membership, and asked if you think Mr. Pirrone's guilty, please stand up. Approximately eight people stood up." Pirrone testified, "He repeated it again. I repeat, if you think Mr. Pirrone's guilty, please stand up. Another 10 or 12 people stood up. He repeated it the third time. I repeat, if Mr. Pirrone's guilty, please stand up. Most of them stood up. Then he repeated the fourth time, I repeat if Mr. Pirrone's guilty, please stand up. That's when everybody stood up except for three old-timers." Pirrone testified there was a vote of around 60 to 3 that he was guilty with a $10,000 fine imposed. Pirrone testified if it would have been only one count the vote would have been 52 in his favor with only 8 voting guilty. Pirrone testified that Page imposed the fine. Pirrone testified the executive board was present, but Page did not confer with the executive board before telling Pirrone what the fine would be. Local 324's minutes of the meeting refer to the June 19 meeting as the "Special Called Meeting." The minutes state the meeting began at 8:05 p.m. and adjourned at 8:36 p.m. The minutes state there was a vote of 56 guilty and 3 not guilty. They state, "DUE TO THE SERIOUSNESS OF THE OFFENSE, MR. PIRRONE WAS FINED TEN THOUSAND DOLLARS ($10,000.00)." Pirrone testified the procedure for counting votes was not legal. He testified the constitution states the vote should be by secret ballot. Pirrone later testified it was his understanding the vote should be by written ballots. He testified there were no ballots passed out. It was a standing vote only. Pirrone testified that no one from Local 324 prior to the internal union trial gave him a copy of the Local 324 by-laws, or of the international constitution.

Pirrone received a letter from Scott, dated June 24, pertaining to the June 19 trial stating, "Following the presentation of evidence, the members in attendance voted overwhelmingly to convict. Financial Sec. Ken Dombrow, officer elected by the Executive Bd. to preside over the proceedings, issued the following penalties pursuant to Article 24, sub-div. 7(e) of the International Constitution: a fine of $10,000." The letter directed Pirrone to remit payment of the fine to the Local 18 financial secretary. Pirrone testified he has not paid the fine, and that he did not have $10,000 to pay it.

Page testified he filed the charge against Pirrone because Page was informed by Stockwell and Everly that Pirrone had not cleared in with dispatch and it was Page's responsibility as president to enforce the constitution and bylaws. Page testified he was told Pirrone had not cleared in, and was given instructions that he needed to clear in before performing work in Local 324's jurisdiction. Page testified he never spoke to the dispatcher to determine if Pirrone had cleared in properly. Page testified, other than Pirrone, he could not recall bringing a charge against a traveler in the past 5 years for failing to clear in.

Page identified the Union's minutes for Pirrone's June 19 trial. Page testified that, during the trial, Page made comments about the reason for the clearing in rule. Page testified, "I think you can tell that I'm a little bit emotional when I get calls from members that are in dire straits, and had conveyed to Gaspare that my responsibility as president was to look out for the members of Local 324 in my jurisdiction first, and then travelers, and whether I conveyed it as eloquent here or not, I can't remember honestly, but that was what my gist of my conversation was." Page testified it was commonplace to vote by standing ballot stating, "It is what has always happened since I've been a member in the Local. For 33 years." Page testified the procedure for calling for a vote is to state three times so there is no misunderstanding as to what you are saying. Page testified Pirrone was found guilty and fined. He testified there were 59 votes, 56 to convict and 3 not to convict. Page testified people are asked to stand three times for guilty before the vote is counted, and then asked three times to stand for not guilty. He explained, "For some reason, people don't always get what you say the first time, so you say it -- it's been done for my 33 years in the Local the exact same way." Page testified the same procedures are followed for all of the disciplinary cases in that, "The script of the trial is exactly the same."

The International Union's constitution provides at Art. XXIV, Subdiv. 7. Section (o) pertaining to trials that, "The said members shall vote by ballot either guilty or not guilty on the merits of each individual charge. Three tellers….shall collect the ballots and announce the verdict." Despite the language in the constitution stating the members shall vote by ballot, and the tellers should collect those ballots, Page testified concerning Local 324's relying on the members to stand for the vote count, rather than a written ballot that, "I would argue that the ballot could be them raising their hand or standing. A ballot is a vote in my mind, looking at this." Page testified the word collect means, "Count. Record the number of votes." When asked if Local 324's standing vote procedure was consistent with the constitution, Page testified, "I believe so." Page testified that at Pirrone's trial there were six calls for standing vote three for guilty and three for not guilty. He testified there was no pause between each of the three requests in that they are made as part of one sentence. He testified you are not encouraging additional people to stand up stating while that is an inference that is not how it goes. Page testified there was no coercive effect of a standing vote in this case, although he admitted there could be one in some cases. Page testified, "All members of the same local." Page explained, "I don't understand what the influence would be; ultimately looking out for their best interests ultimately."

Page testified he did not recall Pirrone making a settlement offer at the outset of his presentation at the trial. Page was then shown the Union's minutes of the trial where it was revealed that Pirrone stated if the Union withdrew its charge against Pirrone, he would withdraw his charge against the Union. The notes reveal Pirrone stated he just wants to go back and retire and never come back. Page testified, "Those are the minutes from the meeting. That's very possible that he said that. I do not remember it specifically in that fashion. I would offer though that the damage had been done at that point." Page explained, "Our member had already missed out on that work that had been performed for however long that period was, the

opportunity to perform that work." However, Page then testified he did not know whether anyone qualified to operate Pirrone's crane on that job was on the out of work list at the time of the trial. Thus, Page admitted that when he previously testified concerning Pirrone's proposed settlement that the damage had already been done that there may have been no damage, as there may not have been any other qualified person to perform the work.

Page testified the meeting for the trial was held in Grand Rapids because that was where the next membership meeting was scheduled. When asked if the meeting for Pirrone could have been delayed a month so that it could have taken place in Detroit, Page testified the constitution says it is heard at the next regular general membership meeting and there was no manipulation to force Pirrone to drive a distance to attend. Page testified he did not recall seeing a request by Pirrone to delay the hearing for a month to give him time to prepare, or to move the hearing to Detroit due to the length of drive for Pirrone to attend in Grand Rapids. The International Constitution provides at Art. XXIV. Subdiv.7. Section (n), "the President shall cause the parties to be notified of the trial date, which must be the next regular meeting thereafter. Unless a request for postponement of the trial shall have been made to and granted by the President, the trial shall proceed upon the date set."

Page testified he has been told there have been several situations where Local 324 members have been fined as much as $10,000 for not clearing in. Page testified it is Local 324's responsibility to collect the fine for another local before Local 324 can continue to accept dues from that member. Page testified failure to pay a fine owed another local would affect their membership status with Local 324 as far as being a member in good standing. Page testified in 2006 or 2007, Local 324 "had some individuals that were working down south, I want to say Kentucky or Tennessee, and the home local fined our member $10,000 for working down there. Respondent produced no documentation to support these assertions. Page testified he did not know of any discipline case other than Pirrone in which Local 324 fined a traveler $10,000.

Page testified he searched Local 324's records and found a charge brought against an individual in December 2006 for working within Local 324's jurisdiction without obtaining consent of the local through proper clearance procedures. Page attended the trial and testified he served as secretary for those proceedings. Page produced three documents pertaining to this matter. The first, dated December 4, 2006, notified the individual of a trial to be held on December 13, 2006, for working at the craft in the jurisdiction of Local 324 without the consent of the Local through the proper clearance procedures. The second correspondence to the same individual was also dated December 4, 2006, which was an offer of settlement from the Union, allowing the individual to pay half the charged fine rate in the amount of $1093.80, rather than the charged amount of $2187. The $2187 was explained in the letter as "reflective of five (5) days of wages and fringe benefits in addition to $100 fine per violation." The third document was minutes of the trial, which Page testified he had stored in his computer. While the notice of the trial set forth a December 13, date, the produced minutes are undated except to state that the charges were read on October 9, 2006. The minutes show there was no ballot taken, rather the vote was taken by the members standing to show their vote. The member, as per the minutes, was issued a fine in the amount of $2187.60.

It is clear Respondent brought Pirrone up on internal union charges because he filed an unfair labor practice charge. In this regard, Everly testified when he spoke to Pirrone on April 22, in response to Everly's question, Pirrone told Everly that he had been at the job for 3 weeks. Pirrone testified that, during that call, Everly told Pirrone that he did not clear in right, and that he needed to quit work immediately. Pirrone disputed Everly's assertion and refused to quit. Everly persisted with further contacts with Mike Chapman insisting that Chapman terminate

Pirrone and replace him with Lambert. Mike Chapman acquiesced to Everly's demand and laid off Pirrone on April 25. Thus, at the time of Everly's initial phone conversation, Everly knew Pirrone had been at the job for a period of time, and according to Everly had not cleared in properly. Respondent also had access to Pirrone's reciprocity form showing that he had been at the job since April 8. In fact, Pirrone placed calls to Respondent's officials on April 2, and April 8 notifying them that he was a traveler working for Selinsky. Yet, despite Pirrone's refusing Everly's demand that he quit his employment and Pirrone's refusal to do so no internal union charge was filed against Pirrone at that time. Rather, 3 days after Everly's demand that Pirrone quit, Everly unlawfully interfered with Pirrone's employment, and caused him to be terminated by Selinsky on April 25.

Pirrone filed an unfair labor practice charge against Local 324 on April 25, and on April 30, Union Attorney Bachelder, in response to the unfair labor practice charge, informed the Union officials that they could not cause Pirrone's termination directly with the Employer, that they should contact the Employer, have Pirrone reinstated, give Pirrone a chance to clear in, and then they could bring him up on internal union charges if he failed to do so. It was Bachelder's view that the Union could fine Pirrone the full amount of any wages he earned. Bachelder testified the Region provided her with documents in support of Pirrone's contention that he cleared in. Pirrone's testimony revealed these documents would have included his phone records showing multiple contacts with Local 324. However, Bachelder made a minimum attempt to investigate whether Pirrone cleared in. Moreover, for the reasons set forth above I have discredited any claims by Everly that he had investigated the matter. Rather, I have concluded Pirrone did clear in, and the Union's claims to the contrary were pretext as a ruse to have traveler Pirrone removed from the job in favor of former Local 324 BA Lambert who sought Pirrone's position. Thus, as per Pirrone's credited testimony, when Boone and Everly showed up on the job on May 8, they gave him minimum information, and I have concluded their whole reason for being there was to set up the basis for filing internal union charges against Pirrone under Bachelder's direction rather than to legitimately request Pirrone to clear in. It is clear, that no internal union charges were filed against Pirrone in April when Everly told him he had not cleared in; and Pirrone refused to leave the job. Yet, the Union chose to file internal union charges against him in May for the same conduct taking place on May 8. The only intervening event was that Pirrone had filed an unfair labor practice charge against the Union. I also note that the Union had notice on April 2, and again on April 8 that Pirrone was working for Selinsky, and that the international constitution had a 30 day time period for the filing of an internal charge. Thus, the internal union charge was untimely when it was filed on May 15. I do not view Pirrone's May 6 reinstatement as a separate event, as it came as a result of the Union's intervention because they had previously unlawfully had his employment terminated.

Thus, there is evidence of timing concerning the Local 324's filing of internal charges against Pirrone, knowledge, and animus through disparate treatment as it relates the Union's conduct before and after Pirrone's filing an unfair labor practice charge, as well as the arbitrary and coercive manner in which the internal union hearing was conducted. In this regard, Local 324 treated Pirrone differently through their internal procedures before and after he filed the unfair labor practice charge although according to them Pirrone engaged in the same conduct of refusing to leave a job site, after he purportedly failed to clear in. I do not place any credence on possible claims by the Union that they could not discipline Pirrone in April because they had no contract with Selinsky. This did not stop Everly from having Pirrone removed from the job on April 25, or referring Local 324 member Lambert out to replace him. It did not stop the Union from obtaining benefits from the Selinsky concerning Pirrone for his work performed in April. It also did not stop Boone and Everly from visiting the jobsite on May 8, and telling Pirrone to clear in, although the earliest time they had a contract with Selinsky was May 9. It also did not stop

Bachelder, prior to May 9, from maintaining to the Board Agent that the Union did not believe Pirrone cleared in properly.

Everly admitted the Union knew Pirrone was on the job in May, since they placed him there as a result of the non-Board adjustment where Pirrone withdrew his unfair labor practice charge against the Union. Yet, they wanted him to go through the exercise of clearing in without bothering to check if the Union had anyone on the out of work list to replace him. Everly even at the time of the unfair labor practice trial testified he never looked at Pirrone's reciprocity form, although Pirrone had filed one. The form, in order for Pirrone to collect benefits, would have required the dated signature of a BA as Haley informed Pirrone. It is likely the completed form would have contained Saunders' signature as the resident BA at the union hall, if not Everly's signature as the field BA for that work area. Pirrone tendered the form to the Union on April 8. A BA's signature on the form would have indicated at a minimum the latest the BA knew Pirrone was working for Selinsky. Yet, Local 324 did not produce the internal copy. I have concluded the assertions by the Union officials that Pirrone did not clear in were known not to be correct, and they were just a pretext for the Union to bring him up on charges, to try and then fine him a prohibitive amount so that he would have to leave the job in retaliation for his filing an unfair labor practice charge against Local 324.

This conclusion is bolstered by the Union's treatment of Pirrone during the internal union proceedings. Pirrone, prior to the June 19 trial, emailed a request for a postponement so that he would have time to prepare, and that the trial could be conducted in Detroit closer to where he worked saving him a lengthy commute. Pirrone's request was denied, although under the Union's constitution Page had the authority to grant such a request. While the charge and trial notification cited provisions of the Union's constitution, although he requested a copy of that document, Pirrone was not provided a copy of the constitution until after the trial. During the trial, Pirrone passed out his phone records, and detailed to the members the manner in which he cleared in by calling the BA following the same procedure he had done for around 40 years. Pirrone testified that Local 324 put on no defense to contest whether he had actually cleared in. Rather, as per the testimony of Pirrone and Page, all that was done was Page making a speech as to how he had to protect the work of local members, or in reality discriminate in favor of local members. While the international constitution required a vote by ballot, to be collected by three tellers this was not done. Rather, as per Pirrone's credited testimony the vote finding him guilty was done by standing head count, and it took three requests to stand for a sufficient number of members to do so for Pirrone to be found guilty.

According to the Merriam-Webster online dictionary, the definition for the term ballot is: "a ticket or piece of paper used to vote in an election; a process that allows people to vote in secret so that other people cannot see their votes; the total number of votes in an election." Yet, Page testified the Union's vote met the ballot criteria of its constitution stating he did not see the difference between a secret vote by ballot; or the standing vote count the Union followed. He testified he did not see how members votes could be influenced as the nature of the proceeding "was looking out for their best interests…". Unfortunately, this explanation indicates the Union's rules will be followed only when it is in the interest of the Union to do so. Page, who brought the charge against Pirrone, put on no evidence that Pirrone did not clear in. While Pirrone's testimony shows he established at the internal union trial that he did clear in, he was nevertheless found guilty by a coercive vote. For the charge was brought by Local 324's president, and in the front of the hearing room as Pirrone credibly described it were all of the Union's BA's and its executive board. Any member who failed to show he was voting in line with the powers that be would have read the veiled message that they could be subject to the same arbitrary treatment as had been exhibited to Pirrone. The meeting only lasted 31 minutes,

which included the trial, and the vote. At which point, Pirrone was unceremoniously told he was being fined the prohibitive amount of $10,000. No basis was giving for how the Union came up with that amount, which is another example of the arbitrary and coercive conduct exhibited here.[19]

The disparate treatment towards Pirrone was further exhibited in other ways. First, Respondent's officials could point to no recent history where a traveler was brought up on charges by Local 324 for failing to clear in. Page testified he had searched Local 324's records but the only thing produced was a charge brought up against a traveler in 2006 for working within the Union's jurisdiction without consent through clearing in. Even here, the records show the individual was offered a settlement if they paid half the calculated fine amount. The eventual fine levied was also premised on a specified formula provided to the individual along with the fine amount. Here, Page's review of the minutes of the hearing revealed Pirrone offered to settle the matter, but the offer was not seriously considered by Respondent. Page, who first contended he did not recall Pirrone even making an offer, then testified it was too late to consider it because the damage had already been done in that a Local 324 member had already been denied work. Yet, Page also admitted that he had not checked the out of work list, and did not know his claim to be true. As set forth above, there was also no formula given to Pirrone to explain the basis of his $10,000 fine, as had been done in 2006 with respect to that traveler.

I find that by its letter of May 15, notifying Pirrone that he had been brought up on internal union charges; its letter of May 22 notifying Pirrone that he was going to be tried based on those charges on June 19; and that conducting the trial against Pirrone on June 19, and on that date fining him $10,000, that Local 324 violated Section 8(a)(1)(A) of the Act by engaging in these actions because Pirrone had filed an unfair labor practice Local 324. See, *NLRB v. Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO,* 391 US 418 (1968); *Service Workers (Kaiser Foundation Health Plan),* 349 NLRB 753 (2007), and *Graphic Communications Local 22 (Rocky Mountain News),* 338 NLRB 130-31 (1982). I also find that by the Union's threatening conduct exhibited towards Pirrone by its letters of May 15 and May 22, in the context of its previously having caused his termination on April 25, and Boone and Everly's May 8 visit to the jobsite that it sufficiently coerced Pirrone to cause him to quit his employment with Selinsky on June 18, the day before his scheduled trial in a quest for leniency at the Union's proceedings although none was shown. I find that by Local 324's actions it unlawfully caused Pirrone to quit his employment on June 18 in violation of Section 8(b)(1)(A) of the Act, and therefore it is required to make Pirrone whole for his loss of employment. See, *Elec. Workers Ibew Local 1579,* 316 NLRB 710, 711-12 (1995); *Plumbers Local 392 (Oberle-Jorde Co.),* 273 NLRB 786, 793 (1984); *Sachs Electric Co.,* 248 NLRB 669 (1980), enfd. in relevant part 668 F.2d 991 (8th Cir. 1982); *Electrical Workers Local 357 (Newtron Heat Trace, Inc.),* 343 NLRB 1486, 1488 (2004), rev. denied 224 Fed. Appx. 727 (9th Cir., 2007), cert. denied 552 U.S. 91 (2007), rehearing denied 552 U.S. 1133 (2008); and *Bricklayers Local No. 1 (Mason Contractors Assn.),* 308 NLRB 350 (1992).

The complaint also alleges that Local 324 violated Section 8(b)(1)(A) of the Act by engaging in the conduct described in the above paragraph because Pirrone was not a member

[19] In noting the size of the fine here, I am aware of the Court's pronouncements in *NLRB v. Boeing Co.,* 412 U.S. 67 (1973), and am not reviewing the reasonableness of a fine per se for matters within the legitimate disciplinary province of a union. Rather, I am reviewing the size of the fine and the manner in which it was administered as evidence of a retaliatory motive for Pirrone's having filed an unfair labor practice charge against Local 324 with the Board.

of Respondent and/or because of his traveler status. It is clear that Local 324's actions beginning on its informing Pirrone to quit his employment in April and causing his termination at Selinsky on April 25, all stemmed from his traveler status; and because he was a member of another local. I have previously found that the Union's claim that he had not cleared in was a pretext for these actions, because Pirrone had in fact cleared in with his direct contacts with Saunders, the BA located at the union hall as his testimony establishes and his phone records confirm. Not only was BA Saunders removed from his dispatcher position following Pirrone's unfair labor practice charge filings; he was terminated altogether within months preceding the unfair labor practice trial 2 years later with no explanation provided. Moreover, Local 324 mysteriously claimed at the unfair practice that they did not maintain Saunders' log book as a dispatcher for the period in question. In fact, although the local union charge involved Pirrone's failure to clear in, Saunders was not called to testify at the internal union proceeding in June 2013, and no evidence was mounted to support Respondent's claim in their internal charge against Pirrone that he had not cleared in. .

Following Pirrone's filing of his initial charge, Bachelder informed Local 324 officials that they could not interfere with his employment by contacting the employer and having him fired as this plainly violated Section 8(b)(2) of the Act. However, she came up with the alternate plan of having the Union file internal union charges against Pirrone, where in her words they could fine him his whole salary in effect making his continuing to work unsustainable. While I have found for the reasons above that Pirrone's filing of an unfair labor practice charge against the Local 324 motivated its new strategy, further angered its officials beyond his mere refusal to leave the job and thereby underscored their harsh, and arbitrary treatment of him in terms of the trial and the size of the fine, an overriding theme throughout was the Union's attempt to discriminate against Pirrone because of his traveler status, and because a former BA wanted his job. Since, I find that Pirrone did follow Respondent's procedures to clear in, Respondent's claim that he did not were a mere pretext to discriminate against traveler Pirrone in favor of Local 324 member and former BA Lambert. Thus, I find Respondent was not attempting to enforce its clear in rule, but rather its actions were an attempt to discriminate against traveler Pirrone, which the case law suggests went beyond being an internal union matter. Thus, I find Respondent took the aforesaid actions against Pirrone because he filed an unfair labor practice charge against Respondent, and because he was a traveler and that both motivations were violative of Section 8(b)(1)(A) of the Act. I also find in the circumstances here the internal rule was not reasonably enforced; and the motive was one of discrimination for the reasons stated thereby bringing its enforcement outside of the lawful limits the Court pronounced in *Scofield v. NLRB*, supra.[20] See, *Elec. Workers Ibew Local 1579,* 316 NLRB 710, 711-12 (1995).

[20] Counsel for the General Counsel attempted to amend the complaint in her post-hearing brief arguing the Union's actions in causing Pirrone to quit were also violative of Section 8(b)(2) of the Act, as well as Section 8(b)(1)(A) of the Act as alleged in the complaint. Since I have found the conduct was violative of Section 8(b)(1)(A) warranting a make whole remedy, I find no reason to address this post-hearing argument by the General Counsel, and decline to approve the requested complaint amendment, noting there was no contention Respondent was given notice of such a proposed amendment before it filed its brief. I also note in the primary case for which the General Counsel urges for support of this theory the Board noted the primary person accused of engaging in the unlawful conduct was a master mechanic who was both a supervisor and job steward thereby giving him dual agency status and bringing his conduct into the more traditional realm of a Section 8(b)(2) violation. See, *Local 138, Int'l Union of Operating Engineers,* 123 NLRB 1393,1399 fn. 16 (1959), enfd. in part, 293 F.2d 187 (2d Cir. 1961).

I do not find the Respondent's reliance on *Nat'l Ass'n of Letter Carriers, AFL-CIO, Branch 1227,* 347 NLRB 289, (2006), where the Board found no breach of duty of fair representation where a union relied in good faith on the advice of counsel concerning its distribution of settlement proceeds between current employees and retirees applicable here. The Board found the advice was reasonable in view of the ambiguous nature of the legal landscape presented there. That case sounded in a fair representation context between current employees and retirees. I find its context inapposite to that presented here involving issues of retaliation for filing an unfair labor practice charge and issues of discrimination against travelers. Moreover, for the reasons stated I found Local 324's claims that Pirrone did not clear in to be pretextual.

CONCLUSIONS OF LAW

1. The Selinsky Force, LLC, (Selinsky) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 324, International Union of Operating Engineers (IUOE), AFL-CIO (Local 324) is a labor organization within the meaning of Section 2(5) of the Act.

3. By causing Selinsky to terminate Gaspare Pirrone on April 25, 2013, because he was not a member of Local 324, and for reasons other than the lawful application of a contractual union security clause, Local 324 violated Section 8(b)(1)(A) and (2) of the Act.

4. By bringing charges against Gaspare Pirrone on May 15, 2013, notifying him of a trial based on those charges on May 22, 2013, causing him to quit his employment with Selinsky on June 18, 2013, and conducting a trial against and fining Pirrone on June 19, 2013 because Pirrone was a traveler, and because he filed an unfair labor practice charge against Local 324, Local 324 violated Section 8(b)(1)(A) of the Act.

5. The forgoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Local 324 has engaged in certain unfair labor practices, Local 324 must cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. I have found that Local 324 caused Selinsky to terminate Pirrone for the period of April 25 to May 6, 2013 in violation of Section 8(b)(1)(A) and (2) of the Act. I have also found that Local 324 caused Pirrone to quit his subsequent employment with Selinsky for the period of June 19, 2013 to February 3, 2014 when Pirrone's replacement ended his work with Selinsky. Therefore, Local 324 is required to make Pirrone whole, plus interest for its unfair labor practices, with the backpay period for Pirrone running from April 25 to May 6, 2013; and from June 19, 2013 to February 3, 2014. The unfair labor practice trial in this case was combined with a compliance proceeding pertaining to Pirrone's backpay. Concerning the compliance aspect of the case, Local 324 does not contest the calculations contained in the outstanding compliance specification. I have therefore determined that Pirrone is owed by Local 324 the amount of $29,551.43 in net backpay; and that Local 324 is obligated to pay $9,792.42 vacation pay; $80.65 in Supplemental Vacation Pay, $1,129.10 to the Defined Contribution Fund, $12,240.95 to the Local 324 Pension Fund, $253.47 for Excess and Incremental Tax for a total of $53,048.02, as reflected in the compliance specification. The sums listed shall be paid directly to Pirrone as appropriate such as net backpay and tax reimbursement and any fund contributions shall be paid directly to Pirrone or paid to the appropriate benefit fund as contributions in Pirrone's behalf as specified by the collective-bargaining agreement in effect or applied during the backpay period in the compliance specification. Local 324, its officers, agents, successors and assigns, shall pay Pirrone the amounts specified, plus interest accrued

to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State laws. Interest shall also be added to the monies owed to the funds using the same formula to calculate interest, but no withholdings are to be deducted. Pirrone shall also be compensated for the adverse tax consequences of receiving a lump sum payment of his backpay, as reflected in the compliance specification. See, *Don Chavas, LLC d/b/a Tortillas Don Dhavas,* 361 NLRB No. 10 (2014). Concerning any reports to the Social Security Administration, Respondent within 21 days of the date the amount of backpay is fixed by Board order, shall file a report allocating backpay with the Regional Director, not the Social Security Administration. Once the allocation of back pay is reported to the NLRB, the Regional Director will forward the information to the SSA "at the appropriate time and in the appropriate manner." See, *Advoservice of New Jersey,* 363 NLRB No. 143 (2016). I shall also order that Local 324 cease and desist in any like or related manner from interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

A. Local 324, International Union of Operating Engineers (IUOE),AFL-CIO (Local 324) its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Causing or attempting to cause employers including The Selinsky Force, LLC, (Selinsky) to discriminate against employees in violation of Section 8(a)(1) and (3) of the Act.

(b) Causing or attempting to cause travelers to quit their jobs by issuing charges, holding trials, and issuing fines because the travelers have filed an unfair labor practice charge against Local 324, or because they are travelers, or to provide jobs to Local 324 members.

(c) In any like or related manner restraining or coercing the employees of Selinsky in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the Act:

(a) Make Gaspare Pirrone whole for any loss of earnings or other benefits, plus interest, suffered as a result of Pirrone's April 25, 2013, termination of employment from Selinsky; as well as for Pirrone's forced quitting his employment with Selinsky on June 18, 2013.

(b) Post at its offices, hiring halls, and at any Selinsky location where Local 324 is permitted to post notices copies of the attached notice. Copies of said notice, on forms provided by the Regional Director for Region 7, shall be posted by Local 324 after being signed by Local 324's authorized representative immediately upon receipt thereof. The notices shall be maintained by Local 324 for 60 consecutive days after posting in conspicuous places where notices to the above-described members and employees are customarily posted. Reasonable steps shall be taken by Local 324 to insure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by e-mail, posting on an intranet and/or other electronic means, if the Local 324 customarily communicates with its members and/or employees of Selinsky by such means. Finally, because it is likely due to the passage of time that Selinsky is no longer performing work at the Gerdau Long Steel North America plant in Monroe, Michigan

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(the Monroe worksite), Local 324 shall, at its expense, be required to mail a signed copy of the Notice to Pirrone, as well as to all Local 324 members and IUOE travelers who worked for Selinsky at that jobsite on or after April 25, 2013.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Local 324 has taken to comply.

Dated, Washington, D.C. May 10, 2016

Eric M. Fine
Administrative Law Judge

APPENDIX
NOTICE TO MEMBERS AND EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT cause or attempt to cause The Selinsky Force, LLC, or any other employer, to discriminate against employees because they are not members of Local 324 , International Union of Operating Engineers (IUOE), AFL-CIO (Local 324), or because they are members of other Operating Engineers locals, in the absence of our lawful enforcement of a valid union security clause.

WE WILL NOT concerning International Union of Operating Engineers (IUOE) AFL-CIO members who are not members of our local, such as are travelers who work in our jurisdiction, threaten them with charges, trials, discipline, or fines, or take those actions against them because of their traveler status, and/or because they have filed an unfair labor practice charge with the National Labor Relations Board against Local 324.

WE WILL NOT cause or attempt to cause employees to quit their employment because they are travelers working in our jurisdiction in order to provide a job for our member(s), and/or because they filed an unfair labor practice charge with the National Labor Relations Board against Local 324.

WE WILL immediately notify The Selinsky Force, LLC, in writing, that we do not object to the Employer offering immediate and full reinstatement to Gaspare Pirrone to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and that we will not question his reemployment or reinstatement.

WE WILL make whole Gaspare Pirrone for the wages and other benefits he lost, with interest, in the manner specified in the Board's decision, as a result of his being laid off by The Selinsky Force, LLC from the Gerdau steel plant job in or near Monroe, Michigan at our request and/or demand, and for his subsequently resigning his employment with The Selinsky Force, LLC, because of the internal charges we brought against him, as well as for any adverse tax consequences, for receiving a lump-sum backpay award.

WE WILL rescind in writing the fine levied against Gaspare Pirrone on about June 19, 2013, or thereafter, and refund any monies he may have paid on account of the fine assessed against him, plus interest as specified in the Board's decision.

WE WILL remove all records of any internal union charges, resulting proceedings, and fines resulting from our described discrimination against Gaspare Pirrone from our files, and notify Gaspare Pirrone in writing that this has been done, and that any charges, resulting proceedings, and fines will not be used against him any way.

LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE), AFL-CIO (THE SELINSKY FORCE, LLC)

(Union)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2543
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CB-105510 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3244.